TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 231 131

THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY, PLAINTIFF IN ERROR,

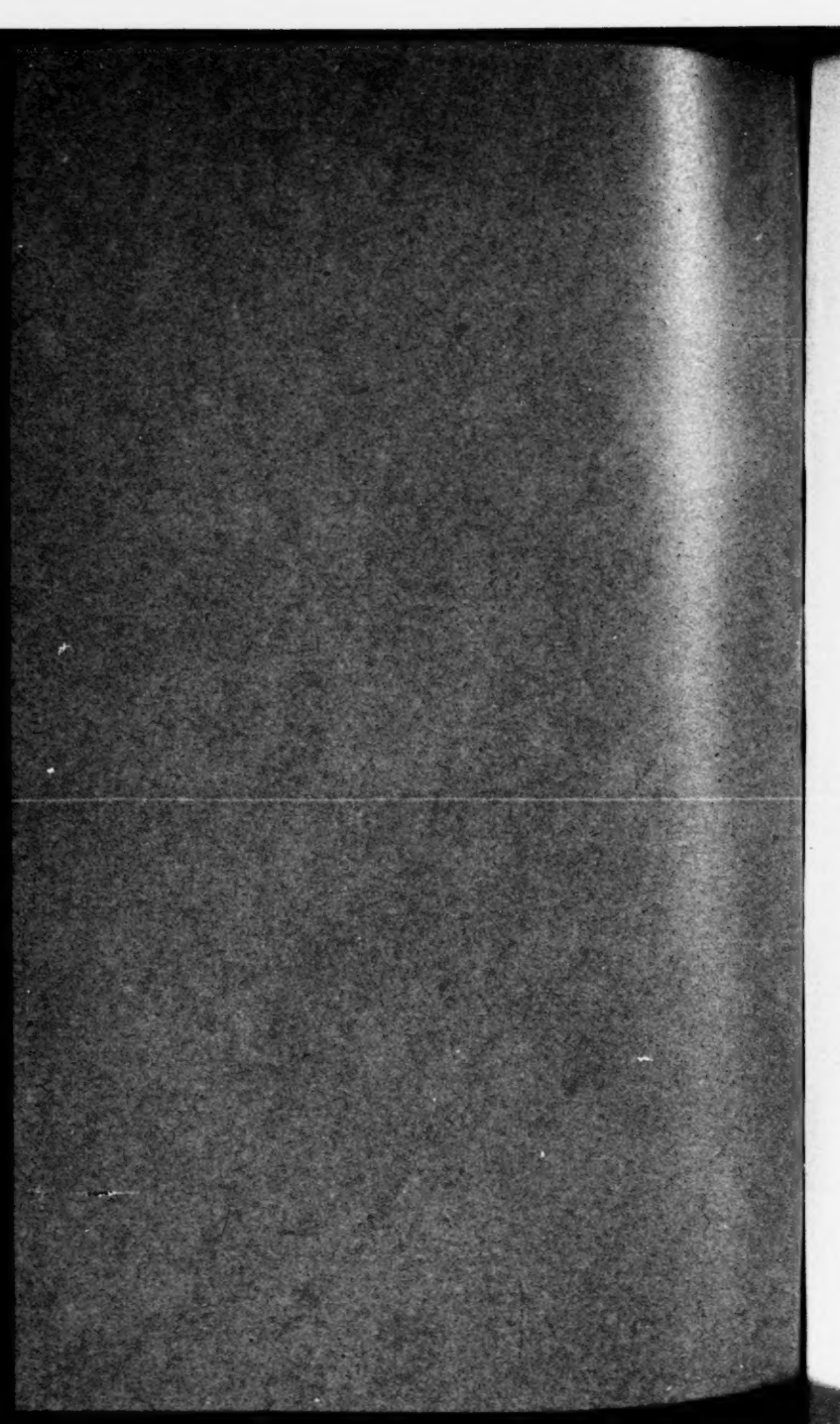
vs.

THE STATE OF MINNESOTA EX REL. THE RAILROAD AND WAREHOUSE COMMISSION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED AUGUST 9, 1900.

(17,866.)



18036

(17,866.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 381.

THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA EX REL. THE RAILROAD AND WAREHOUSE COMMISSION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

INDEX.

	Original.	Print.
Writ of error (copy)	*a*	1
Citation	*c*	1
Acceptance of service of citation	*d*	2
Petition for writ of error	*e*	2
Assignment of errors in State supreme court	*i*	4
Assignment of errors in Supreme Court of the United States	*n*	7
Bond on writ of error	*s*	10
Transcript from district court of Ramsey county	1	11
Petition for alternative writ of mandamus	1	11
Exhibit A—Order of railroad and warehouse commission, September 22, 1898	10	16
B—Order of railroad and warehouse commission, January 19, 1899	13	18
C—Order of railroad and warehouse commission, April 8, 1899	17	20
D—Order of railroad and warehouse commission, April 10, 1899	19	21

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 5, 1900.

	Original.	Print
Alternative writ of mandamus	21	23
Order to issue alternative writ of mandamus	34	30
Separate answer of the M. & St. L. R. R. Co.	35	31
Notice as to case and bill of exceptions, &c.	49	38
Case and bill of exceptions	49	38
Motion to dismiss	50	38
Motion for judgment	54	41
Testimony of E. B. Ober	56	42
Frank Nay	61	45
Frank Nay (recalled)	80	58
W. M. Hopkins	99	69
Ira B. Mills	108	76
W. M. Hopkins (recalled)	110	77
Ira B. Mills (recalled)	146	100
Thomas Yapp	148	101
Frank Nay (recalled)	156	107
Agreements and admission	158	108
Motion to strike out testimony	159	109
Findings of fact	160	109
Conclusions of law	160	110
Order for peremptory writ of mandamus	161	110
Memorandum: Opinion	163	111
Judge's certificate to case and bill of exceptions	164	112
Notice of settlement of case and bill of exceptions	165	112
Motion to grant new trial	166	113
Order denying motion	167	113
Judgment	168	114
Notice of appeal	171	115
Stipulation as to exhibits	172	116
M. & St. L. Exhibit A—Blue print	173	116
Plaintiff's Exhibit 1—Statement showing cost of operation, &c.	174	117
2—Statement showing cost of operation, &c	175	118
3—Statement showing mileage, rates, &c.	176	118
4—Statement showing total tons hard coal, &c.	177	119
5—Statement showing mileage, rates, &c.	178	119
6—Statement showing cost of operation, &c.	179	120
Syllabus	180	121
Opinion	182	122
Judgment	200	132
Order for judgment	202	133
Minutes of argument	204	134
Clerk's certificate	207	134

a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

Because that in the records and proceedings and also in the rendition of the judgment of a plea which is in the supreme court of Minnesota, before you or some of you, being the highest court of law or equity in said State in which a decision could be had in the said suit between The State of Minnesota *ex rel.* Railroad and Warehouse Commission, as plaintiff, and The Minneapolis and St. Louis Railroad Company and The St. Paul and Duluth Railroad Company, defendants, wherein was drawn in question the validity of a statute of the State of Minnesota, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of such validity, a manifest error hath happened, to the great damage of the Minneapolis and St. Louis Railroad Company, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment be therein given, *that*, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 3rd day of July, A. D. 1900.

[U. S. Circuit Court Seal.]

HENRY D. LONG,
Clerk of the Circuit Court of the United States in and for District of Minnesota.

b [Endorsed:] Copy. State of ——, county of ——. U. S. Supreme Court. The Minneapolis and St. Louis Railroad Company, plaintiff in error, *vs.* State of Minnesota *ex rel.* Railroad & Warehouse Com., defendant in error. Writ of error.

c UNITED STATES OF AMERICA, *ss:*

To the State of Minnesota *ex rel.* The Railroad and Warehouse Commission, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to the writ of error filed in the clerk's office of the supreme court of the State of Minnesota, wherein The Minneapolis and St. Louis Railroad Company is plaintiff in error

and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Chas. M. Start, chief justice of the supreme court of the State of Minnesota, this 3d day of July, A. D. 1900.

CHAS. M. START,
Chief Justice of the Supreme Court, State of Minnesota.

d [Endorsed:] 12111. Original. U. S. Supreme Court. The Minneapolis & St. Louis Railroad Company, plaintiff in error, *vs.* State of Minnesota *ex rel.* Railroad & Warehouse Commission, defendant in error. Citation. Due service of the within by copy is hereby admitted, at St. Paul, Minn., this 3rd day of July, A. D. 1900. W. B. Douglas, attorney gen., attorney for defendant in error. Filed Jul- 3, 1900. Darius F. Reese, clerk.

e To the Honorable Charles M. Start, chief justice of the supreme court of the State of Minnesota:

Now comes the Minneapolis and St. Louis Railroad Company, a citizen of the United States of America, by its attorney, Albert E. Clarke, and complains that in the records and proceedings and also in the rendition of the judgment in a suit between The State of Minnesota *ex rel.* the Railroad and Warehouse Commission of said State, plaintiff, and said The Minneapolis and St. Louis Railroad Company, as defendant, in the supreme court of the State of Minnesota, that being the highest court of law or equity in said State of Minnesota in which a decision can be had in said suit, and in which a final judgment was rendered against said defendant on the 13th day of June, 1900, in said suit, wherein it was adjudged that the law enacted by the legislature of the State of Minnesota, embodied in chapter 91, General Laws of 1895, and particularly in subdivisions B, C, and D of section three of said chapter, and any and all laws of said State which assume to confer upon the railroad and warehouse commission the power and authority to compel two or more railroad companies to enter into a joint tariff and make or adopt a joint rate for the transportation of property over the lines of said companies, and which assume to authorize said commission to make a division of joint earnings between two or more railroad companies, is not violative of the fourteenth amendment to the Constitution of the United States, in this:

It denies to this defendant the right to contract in reference to its own business, and thus takes its property without its consent.

It compels this defendant to enter into involuntary, unreasonable, and unprofitable contracts with other carriers, at the instance of third parties, resulting in a loss of business and revenue on the part of the defendant.

It requires this defendant to enter into involuntary contracts with other carriers.

It assumes to fix and enforce the terms and conditions upon which such involuntary contracts shall be performed.

It requires this defendant to hire and use the cars and ve-
f hicles of other carriers in the transportation of traffic upon its own line.

It deprives this defendant of the right to make its own contracts with other carriers, and delegates to a non-judicial body the right to fix and determine the proportion of a joint through rate which shall be paid to the defendant, thereby depriving this defendant of its property, the right to use the same, and the right to contract in relation thereto.

It denies to this defendant the equal protection of the laws, which protect and insure to all citizens the right to contract in relation to their property, and deprives the defendant of its property without due process of law.

It abridges the privileges and immunities of this defendant as a citizen of the United States by depriving it of the right to control, conduct, and manage its own business.

It was also adjudged by said supreme court by its final judgment in said suit that said acts of the legislature of said State and said laws of said State did not abridge the privileges or immunities of said The Minneapolis and St. Louis Railroad Company, defendant in said suit, nor deny to it the equal protection of the laws, nor deprive it of its property without due compensation or due process of law, contrary to the provisions of the fourteenth amendment to the Constitution of the United States, and that said acts of the legislature of said State and the said laws of said State do not violative or contravene the provisions of the fourteenth amendment to the Constitution of the United States in either or any of the following conditions:

In authorizing the State of Minnesota, acting through its railroad and warehouse commission, to establish rates which discriminate in favor of all dealers in and the consumers of hard coal at certain towns and stations within said State, as against other dealers and consumers, citizens of said State, and to discriminate in the rates established for one carrier as compared with the rates allowed other carriers in the same State for like service.

In authorizing the State of Minnesota, acting through its railroad and warehouse commission, to compel said The Minneapolis and
g St. Louis Railroad Company to enter into a joint rate, and to make and perform an agreement with another carrier for the transportation of property over the lines of both companies.

In authorizing the State of Minnesota, acting through its railroad and warehouse commission, to compel two or more connecting carriers to transport shipments passing over two or more lines for a less or different rate or tariff than the sum of the different local rates or tariffs of the several carriers.

In authorizing the State of Minnesota, acting through its railroad and warehouse commission, to declare and determine the manner and proportion in which money earned by two or more carriers in transporting merchandise over two or more connecting lines shall be divided between the several carriers.

In authorizing the State of Minnesota, acting through its railroad and warehouse commission, to compel a railroad carrier to trans-

port traffic originating upon the line of another railroad, designated by the railroad and warehouse commission, at a different and less rate than it may lawfully collect and receive for the same service when the traffic originates upon its own line, thereby forcing the carrier to discriminate in favor of certain traffic and certain localities.

In authorizing the State of Minnesota, acting through its railroad and warehouse commission, to compel a railroad carrier to charge and collect different rates per ton per mile for the transportation of traffic originating upon certain other railroads from that collected for traffic local to its own railroad, notwithstanding the service rendered is identical.

Wherefore said The Minneapolis and St. Louis Railroad Company, defendant in said suit, prays for the allowance of a writ of error, and for such other process as may cause the same to be corrected by the Supreme Court of the United States.

ALBERT E. CLARKE,
Attorney for the Minneapolis and St. Louis Railroad Company, Defendant.

Allowed.
CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

St. Paul, Minn., July 3rd, 1900.

h [Endorsed:] Copy. State of ——, county of ——. U. S. Supreme Court. The Minneapolis and St. Louis Railroad Co., plaintiff in error, *vs.* State of Minnesota *ex rel.* Railroad & Warehouse Com., defendant in error. Petition for writ of error.

i *Assignment of Errors Made and Filed by Defendant and Appellant in the State Supreme Court.*

The court erred:

1. In ruling and deciding that the appellant had not proved by a preponderance of the evidence that the portion of the joint through rate designated and set apart by the railroad and warehouse commission as compensation for the service rendered by appellant and its connecting carriers, the Wisconsin, Minnesota & Pacific Railroad Company and the Minneapolis, New Ulm & Southwestern Railroad Company, in the transportation of hard coal in car-loads from Duluth to points named in Schedule "A" of said order, is inadequate, insufficient, and not compensatory, and is not a just and fair compensation for such service.

2. In holding and deciding that the order of the railroad and warehouse commission by which it required this appellant to transport hard coal in car-loads from Minneapolis to the several stations named in said order for a compensation and at a rate less than the cost and true value of the services rendered is not violative of the fourteenth amendment to the Constitution of the United States,

which provides that no State shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

3. In holding that the order of the railroad and warehouse commission by which this appellant is required to transport hard coal in car loads at a rate and price per ton fixed by said order, which rate or price is less than the actual cost and expense incurred by appellant in rendering said service, and is unjust, inadequate, and not compensatory, is not violative of section 10 of article 1 of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts.

4. In holding that the law enacted by the legislature of the State of Minnesota, embodied in chapter 91, General Laws of 1895, and particularly in subdivisions B, C, and D of section three of said chapter, and any and all laws of said State which assume to confer upon the railroad and warehouse commission the power and authority to compel two or more railroad companies to enter into a joint tariff and make or adopt a joint rate for the transportation of property over the lines of said companies, and which assume to authorize said commission to make a division of joint earnings between two or more railroad companies, is not violative of the fourteenth amendment to the Constitution of the United States, in this:

It denies to this defendant the right to contract in reference to its own business, and thus takes its property without its consent.

It compels this defendant to enter into involuntary, unreasonable, and unprofitable contracts with other carriers, at the instance of third parties, resulting in a loss of business and revenue on the part of the defendant.

It requires this defendant to enter into involuntary contracts with other carriers.

It assumes to fix and enforce the terms and conditions upon which such involuntary contracts shall be performed.

It requires this defendant to hire and use the cars and vehicles of other carriers in the transportation of traffic upon its own line.

It deprives this defendant of the right to make its own contracts with other carriers, and delegates to a non-judicial body the right to fix and determine the proportion of a joint through rate which shall be paid to the defendant, thereby depriving this defendant of its property, the right to use the same, and the right to contract in relation thereto.

It denies to this defendant the equal protection of the laws, which protect and insure to all citizens the right to contract in relation to their property, and deprives the defendant of its property without due process of law.

It abridges the privileges and immunities of this defendant as a citizen of the United States by depriving it of the right to control, conduct, and manage its own business.

5. In holding that the rate established by the order of the railroad and warehouse commisson does not discriminate in favor of all dealers in and consumers of hard coal at the points covered by

the order, as against other deal-s and consumers, citizens of
k this State, and discriminates against the appellant as compared with the rates allowed other carriers for like service.

6. In holding that the State of Minnesota, acting through the railroad and warehouse commission, has the right, power, and authority to compel the appellant to enter into a joint rate, or make and perform an agreement with another carrier for the transportation of property over the lines of both companies.

7. In holding that the State of Minnesota has the right, power, or authority to make and enforce a law by which two or more connecting carriers may be compelled to transport shipments passing over two or more lines for a less or different rate or tariff than the sum of the reasonable local rates or tariffs of the several carriers.

8. In holding that the State of Minnesota has the right, power, or authority to make and enforce a law which declares and determines the manner and proportion in which money earned by two or more carriers in transporting merchandise over two or more connecting lines shall be divided between the several carriers.

9. In holding that the State of Minnesota has the right, power, or authority to make and enforce a law whereby a railroad carrier may be compelled to transport traffic originating upon the line of another railroad designated by the railroad and warehouse commission, at a different and less rate than it may lawfully collect and receive for the same service where the traffic originates upon its own line, thereby forcing defendant to give a preference and discriminate in favor of certain traffic and certain localities.

10. In holding that the State of Minnesota has the right, power, or authority to make and enforce a law whereby a railroad carrier may be compelled to charge and collect different rates per ton per mile for traffic originating upon other railroads from that collected for traffic local to its own railroad, notwithstanding the service rendered is identical.

l STATE OF MINNESOTA, *ss:*

Supreme Court.

I, D. F. Reese, clerk of the supreme court of the State of Minnesota, do hereby certify that the above and foregoing assignment of errors was made and filed by defendant and appellant in the above-entitled action of State of Minnesota *ex rel.* Railroad and Warehouse Commission, respondent, *v.* The Minneapolis and St. Louis Railroad Company and The St. Paul and Duluth Railroad Company, appellants. Said assignment of errors was filed in said supreme court on the 3rd day of April, 1900, in accordance with the rules and practice of said court, and became and constituted a part of the record upon which said cause was heard, tried, and determined and upon which the same was argued and submitted in said court.

In witness whereof I have hereunto set my hand and affixed the

seal of the supreme court of the State of Minnesota, at the capital, St. Paul, Minnesota, this 26th day of July, 1900.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE,
Clerk of the Supreme Court of Minnesota,
By J. L. HELM, *Deputy.*

m [Endorsed:] Copy. State of ——, county of ——, —— court. The Mpls. & St. Louis R. R. Co., plaintiff in error, *vs.* State of Minn. *ex rel.* Railroad & Warehouse Comm'n, defendant in error. Assignments of error filed in State supreme court.

n In the Supreme Court of the United States.

THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY, Plaintiff in Error,
vs.
STATE OF MINNESOTA *ex Rel.* RAILROAD AND WAREHOUSE COMMISSION, Defendant in Error.

Assignment of Errors.

The plaintiff in error respectfully submits that the supreme court of Minnesota erred in this:

1. In holding and deciding that the order of the railroad and warehouse commission by which it required this plaintiff in error to transport hard coal in car-loads from Minneapolis to the several stations named in said order for a compensation and at a rate less than the cost and true value of the services rendered is not violative of the fourteenth amendment to the Constitution of the United States, which provides that no State shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

2. In holding that the order of the railroad and warehouse commission by which this appellant is required to transport hard coal in car-loads at a rate and price per ton fixed by said order, which rate or price is less than the actual cost and expense incurred by plaintiff in error in rendering said service, and is unjust, inadequate, and not compensatory, is not violative of section 10 of article 1 of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts.

3. In holding that the law enacted by the legislature of the State of Minnesota, embodied in chapter 91 of the General Laws of 1895, by which the railroad and warehouse commission of said State is authorized to compel two or more railroad companies to enter into a joint tariff and make and adopt a joint rate for the transportation of property over the lines of said companies, and which assumes to authorize said commission to make a division of the joint earn-

o ings of two or more railroad companies, and to apportion such earnings, is not violative of the fourteenth amendment to the Constitution of the United States, in this:

It denies to the plaintiff in error the right to contract in reference to its own business, and thus takes its property without its consent.

It compels the plaintiff in error to enter into involuntary, unreasonable, and unprofitable contracts with other carriers at the instance of third parties, resulting in a loss of business and revenue on the part of the plaintiff in error.

It requires the plaintiff in error to enter into involuntary contracts with other carriers.

It assumes to fix and enforce the terms and conditions upon which such involuntary contracts shall be performed.

It requires the plaintiff in error to hire and use the cars and vehicles of other carriers in the transportation of traffic upon its own line.

It deprives the plaintiff in error of the right to make its own contracts with other carriers and delegates to a non-judicial body the right to fix and determine the proportion of a joint through rate which shall be paid to the plaintiff in error, thereby depriving the plaintiff in error of its property, the right to use the same, and the right to contract in relation thereto.

It denies to the plaintiff in error the equal protection of the laws, which protect and insure to all citizens the right to contract in relation to their property, and deprives the plaintiff in error of its property without due process of law.

It abridges the privileges and immunities of the plaintiff in error as a citizen of the United States by depriving it of the right to control, conduct, and manage its own business.

4. In holding that the law of the State of Minnesota, by which it is held that in estimating and computing the cost of operating a railway per ton of freight per mile of carriage, for the purpose of determining the reasonableness of a tariff of rates, it is error to take into consideration any part of the earnings applied to the payment of dividends upon the capital stock of such railway, does not violate the fourteenth amendment of the Constitution of the United States, in this:

The enforcement of such law deprives the company or corporation operating such railway of the right to earn or pay any dividend whatever on its capital stock, or to derive any income or return from the use and operation of its property, and enables the State, acting through the railroad and warehouse commission, to make and enforce a tariff which will not permit the carrier to earn any sum in excess of actual cost of operation, and will compel such carrier to devote its property to the public use without compensation, whereby it is deprive- of its property without due process of law and is denied the equal protection of the laws.

5. In holding that the State law, which under the guise of a so-called "commercial necessity" assumes to compel railway carriers to transport freight over their lines of railway for a rate less than the actual cost of such service, does not violate the fourteenth amendment to the Federal Constitution by depriving such carrier of their property without due process of law and by denying the equal protection of the laws, which ensure to all citizens the right to earn and

receive a reasonable compensation for service rendered and a reasonable profit over and above the actual reasonable cost of such service.

6. In holding that the law of the State of Minnesota which authorizes all other citizens of said State to contract for, collect, and receive a profit or dividend equal to six per cent. upon the capital invested and denies to railway carriers the right to earn, collect, and receive a dividend or interest charge not exceeding six per cent. upon its actual and necessary capitalization does not violate the fourteenth amendment to the Constitution of the United States by depriving such railway carriers of their property without due process of law and by denying them the equal protection of the laws.

7. In holding that the State of Minnesota, acting through the railroad and warehouse commission, has the right, power, and authority to compel the plaintiff in error to enter into a joint rate or make and perform an agreement with another carrier for the transportation of property over the lines of both companies.

9 8. In holding that the State of Minnesota has the right, power, or authority to make and enforce a law by which two or more connecting carriers may be compelled to transport shipments passing over two or more lines for a less or different rate or tariff than the sum of the reasonable local rates or tariffs of the several carriers.

9. In holding that the State of Minnesota has the right, power, or authority to make and enforce a law which declares and determines the manner and proportion in which money earned by two or more carriers in transporting merchandise over two or more connecting lines shall be divided between the several carriers.

10. In holding that the State of Minnesota has the right, power, or authority to make and enforce a law whereby a railroad carrier may be compelled to transport traffic originating upon the line of another railroad designated by the railroad and warehouse commission at a different and less rate than it may lawfully collect and receive for the same service where the traffic originates upon its own line, thereby forcing defendant to give a preference and discriminate in favor of certain traffic and certain localities.

11. In holding that the State of Minnesota has the right, power, or authority to make and enforce a law whereby a railroad carrier may be compelled to charge and collect different rates per ton per mile for traffic originating upon other railroads from that collected for traffic local to its own railroad, notwithstanding the service rendered is identical.

12. In holding that the evidence does not show conclusively that the cost of the service required by the State, through its railroad and warehouse commission, is not greater than the revenue to be derived from the proportion of the joint rate awarded to the plaintiff in error.

13. In holding that in order to show that the rate fixed by the railroad and warehouse commission is unreasonable the plaintiff in error is bound to show the exact cost of transporting each particular commodity, and that such fact is not established by proof

that the cost per ton per mile of transporting all merchandise is more than the rate per ton per mile fixed by the order of the commission.

r 14. In holding that there was not competent and sufficient evidence of the capitalization, cost, and value of the railroad of the plaintiff in error.

s Supreme Court of the United States, *ss:*

STATE OF MINNESOTA *ex Rel.* RAILROAD AND WAREHOUSE COMMISSION, Plaintiff,
vs.
THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY, Defendant.

Know all men by these presents that we, the Minneapolis and St. Louis Railroad Company, as principal, and the National Surety Company, a corporation, as surety, are held and firmly bound unto the Railroad and Warehouse Commission in the sum of one thousand ($1,000.00) dollars, to be paid to the said Railroad and Warehouse Commission; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our successors and assigns, firmly by these presents.

Sealed with our seals and dated this 23d day of June, A. D. 1900.

Whereas the above-named The Minneapolis and St. Louis Railroad Company hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Minnesota:

Now, therefore, the condition of this obligation is such that if the above-named The Minneapolis and St. Louis Railroad Company shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY,
By T. F. DAY, *Vice-Pres't.*

Attest: JOS. GASKELL, *Secretary.*

NATIONAL SURETY COMPANY, [SEAL.]
By F. A. CHAMBERLAIN, *Res't Vice-President.*

Attest: AL. J. SMITH,
[CORPORATE SEAL.] *Res't Ass't Secretary.*

Signed, sealed, and delivered in presence of—
W. W. COLE.
M. C. BROWN.
J. J. HARPER.
C. E. SWAN.

t STATE OF MINNESOTA, } *ss:*
County of Hennepin, }

On this 2nd day of July, 1900, before me personally appeared Al. J. Smith, resident assistant secretary of the National Surety Com-

pany, the above-named corporation, with whom I am personally acquainted, who, being by me duly sworn, said that he is resident assistant secretary of said corporation, the National Surety Company; that he knows the corporate seal of said corporation; that the seal affixed to the foregoing instrument is the corporate seal; that it was affixed by order of the board of directors of said corporation; that the internal-revenue stamps affixed to said instrument, exclusive of the fifty-cent stamp affixed thereto and canceled by the principal in said instrument named, *is* equal in amount to one-half of one per cent. on each dollar or fractional part thereof of the amount of premium charged by said corporation as the surety on said instrument, and that he signed said instrument as resident assistant secretary of said corporation by like authority; and the said Al. J. Smith further said that he is acquainted with F. A. Chamberlain and knows him to be resident vice-president of said company; that the signature of said F. A. Chamberlain subscribed to the said instrument is the genuine handwriting of the said F. A. Chamberlain and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said Al. J. Smith, resident assistant secretary; and the said Al. J. Smith acknowledged said instrument to be the free act and deed of said corporation.

JOHN J. HARPER,
[NOTARIAL SEAL.] *Notary Public, Hennepin County, Minnesota.*

u [Endorsed:] Copy. State of ——, county of ——. U. S. Supreme Court. The Minneapolis and St. Louis Railroad Company, plaintiff in error, *vs.* State of Minnesota *ex rel.* Railroad & Warehouse Com., defendant in error. Bond. I hereby approve the within bond and sureties this 3rd day of July, 1900. Chas. M. Start, chief justice supreme court of Minnesota.

1 STATE OF MINNESOTA:

Supreme Court, April Term, 1900.

STATE OF MINNESOTA, }
County of Ramsey. }

District Court, Second Judicial District.

STATE OF MINNESOTA *ex Rel.* RAILROAD AND WAREHOUSE COMMISSION, Plaintiff,
vs.
THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY and THE ST. PAUL & DULUTH RAILROAD COMPANY, Defendants.

Petition for Alternative Writ of Mandamus.

To the honorable the district court of Ramsey county, Minnesota:

The petition of the Railroad and Warehouse Commission by W. B. Douglas, attorney general of the State of Minnesota, respectfully states and shows:

That George L. Becker, Ira B. Mills and Peter M. Ringdal,
2 are the duly appointed, qualified and acting railroad and warehouse commissioners of the State of Minnesota, and as such constitute the railroad and warehouse commission of such State;

That A. K. Teisberg is the duly appointed, qualified and acting *secretary of such commission*;

That the St. Paul & Duluth Railroad Company is a railroad corporation and common carrier of freight and passengers for hire, duly created, organized and existing under — by virtue of the laws of the State of Minnesota, and engaged in operating a railroad in said State of Minnesota, the main line of which extends from the city of Duluth in the county of St. Louis, Minnesota, to the cities of St. Paul in Ramsey county, and of Minneapolis in Hennepin county, in said State;

That the Minneapolis & St. Louis Railroad Company is a railroad corporation and common carrier of freight and passengers for hire, duly created, organized and existing under and by virtue of the laws of the State of Minnesota, and engaged in operating a railroad in said State of Minnesota, one of its said lines of road extending from said cities of St. Paul and Minneapolis through the counties of Ramsey, Hennepin, Carver, Scott, Le Sueur, Waseca, and Freeborn, to Boyd in said county of Freeborn;

That from said main line, branch lines of road extend through various other counties of said State, one of said lines extending to the town of Winthrop in Blue Earth county in said State;

That the Minneapolis, New Ulm & Southwestern Railroad Company is a railroad corporation and common carrier of freight and passengers for hire, created, organized and existing under and by virtue of the laws of the State of Minnesota, and the owner of
3 the road extending from said town of Winthrop to the city of New Ulm in Brown county, Minnesota;

That the defendant, The Minneapolis & St. Louis Railroad Company, is the owner of all of the capital stock of said Minneapolis, New Ulm & Southwestern Railroad Company, and is in the active management and control of and actually operates said railroad from said Winthrop to New Ulm;

That said companies are and have been for all the times herein stated, common carriers of passengers and freight and engaged in doing a freight business over said lines of road, and under traffic agreements with each other have been engaged in carrying various kinds of freight particularly hard coal, from said city of Duluth to the points above described on said Minneapolis & St. Louis railroad and said Minneapolis, New Ulm & Southwestern railroad, as well as all intermediate points on said two last-mentioned railroads, for a joint through rate established as hereinbefore stated by an agreement between said St. Paul & Duluth Railroad Company and said Minneapolis & St. Louis Railroad Company;

That said defendant companies and each of them have full and ample means and facilities for the carrying on of said freight business, including rolling stock, as well as complete terminals at term-

inal points, and track connections and yards at all connecting points; and are fully able to and for a long time past have been engaged in making such freight shipments in car-load lots without any change of cars, and are fully equipped and prepared and able to accept shipments of the character above described, and for a long time past and

4 *until the fixing of the rates therefor by said* railroad and warehouse commission, as hereinafter alleged, said defendant companies did receive such freight and make such hauls and shipments and had established therefor rates which were known and published as joint through rates;

That amongst other rates agreed upon by said companies, a joint through rate for hard coal in car-load lots had been established and agreed upon, from said city of Duluth to each and every point upon the line of said Minneapolis & St. Louis Company and upon the line of said Minneapolis, New Ulm & Southwestern Railroad Company, in said State of Minnesota, which said joint rate it was the practice of said defendant companies to divide between them in such proportion as they had theretofore agreed upon. And each of said defendant companies during all of said times was and still is fully equipped and competent and able to carry said coal and accept all shipments thereof, and do and perform all of the things necessary in and about the receiving, hauling and delivering of said coal, as the same might be demanded and as public necessity might require. And for more than one year prior to the making of the order hereinafter mentioned had been engaged in and had carried large quantities of hard coal between said points at and for said through rate;

That on the 22nd day of September, 1898, the railroad and warehouse commission of the State of Minnesota by a resolution duly passed and adopted by said commission, adjudged and determined that said commission should investigate the joint through rate charges by said defendant companies as freight for hard coal in car-load lots from said city of Duluth to said city of New Ulm, a copy of which said order or resolution is hereto attached, marked Exhibit "A;"

5 That said Exhibit "A" was duly served upon each of said defendants, and thereafter and within twenty days after the service thereof, said defendants duly appeared in said proceedings before said commission and duly submitted their respective answers, in which the claims of said defendant railroad companies were set forth as to a proper and reasonable joint through rate upon said coal shipments;

That thereafter said matter came on duly to be heard before said railroad and warehouse commission and said commission having duly heard and considered all of the evidence produced upon said matter, and having duly considered the same, did thereafter and on the 19th day of January, 1899, duly make and enter its order and decision wherein and whereby it was determined what was a reasonable and fair joint through rate over said lines of road, from said city of Duluth to the various points upon the lines of said Minneapolis & St. Louis railroad and upon the line of said Minneapolis, New

Ulm & Southwestern railroad, mentioned in said order; a copy of which said order is hereto attached and marked Exhibit "B;"

That in the proceedings to determine said reasonable joint through rates hereinbefore described, said railroad and warehouse commission had full jurisdiction of the matters to be determined, and the matters determined in and by said order and decision, and full jurisdiction of the defendant railroad companies, and all of said proceedings were duly and legally conducted, of all of which said defendant companies had full and due notice and knowledge;

That said order, "Exhibit B" was duly served upon each of the defendants on the 19th day of January, 1889; that more than
6 thirty days have elapsed since the making and service of said order and no appeal has been taken by either of said defendant companies from said order. And thereafter and on the 23rd day of February, 1899, said railroad and warehouse commission duly made and entered its order promulgating the said order, Exhibit "B," and duly caused such order of promulgation to be published and the same was on the 8th day of March, 1899, published in the New Ulm Review, a weekly newspaper printed and published in New Ulm, Brown county, Minnesota, that being one of the stations or points named in said order, the rate to which had been fixed and determined by said order. That said New Ulm Review was and is a weekly newspaper of general circulation in said Brown county, published in the English language, and had been so published and circulated for more than one year prior to the publication of said order, and the publication in said New Ulm Review was full, due and legal publication and promulgation of said order hereinbefore mentioned; and was the publication thereof ordered and directed by said commission;

That thereafter it being duly made to appear to said railroad and warehouse commission that said railroad companies were unable to and had failed to agree upon a proper division between themselves of the joint through rate so established by said order, Exhibit "B," such proceedings were had that said defendant companies were duly cited to be and appear before said commission on the 23rd day of March, 1899, at ten o'clock in the forenoon of that day, at the office of said commission in the city of St. Paul, Minnesota, and were at the same time duly notified that if they failed to agree on such division of such joint through rate on or before said 23rd day
7 of March, 1899, that said railroad and warehouse commission would at said time and place proceed to consider and determine in what proportion such division should be made between said defendant companies;

That pursuant to said notice and citation said defendant companies duly appeared before said commission at said time and place, and it appearing that no division of said rates had been agreed upon between said railroad companies, said railroad and warehouse commission duly proceeded to hear all the evidence produced upon said matter, and having duly considered the same and the value of the terminal facilities of said defendant companies and all the circumstances of the haul, thereafter and on the 8th day of April, 1899, duly

made and entered their order and determination upon said division, a copy of which is hereto annexed and marked Exhibit "C"; which said order was thereafter and on the 10th day of April, 1899, duly served upon each of said defendant companies. That more than thirty days have elapsed since the service of said order Exhibit "C" on said defendant companies, and no appeal has been in any manner taken therefrom by either of said defendant companies, and the same is now in full force and effect;

That thereafter and on the 10th day of April, 1899, said railroad and warehouse commission again duly promulgated the order made by it fixing and establishing the joint through rates hereinbefore described, to wit, Exhibit "B," and duly caused such schedule of rates together with said order of promulgation to be duly published in said New Ulm Review, and the same was so published in said New Ulm Review on the 12th day of April, 1899. That a copy of said last-mentioned order is hereto attached, marked Exhibit "D";

8 That the orders and judgments of said railroad and warehouse commission herein referred to are all in full force and effect and were each and all duly made and entered in the course of said proceedings as said railroad and warehouse commission had full authority, jurisdiction and right to do. That no appeal has been taken from any of said orders, nor have any proceedings whatever been instituted to stay the operation of the same, and each of said orders is binding and conclusive upon each of said defendant companies herein.

That notwithstanding that fact said defendant railroad companies, their officers, agents and employés have failed, neglected and refused, and still fail, neglect and refuse to adopt the schedule of rates so fixed by said railroad and warehouse commission, or keep for public inspection schedules showing such rates; and have refused, failed and neglected to file with the railroad and warehouse commission copies of schedules of their classifications, rates, fares, and charges, for the hauling of hard coal in car-load lots in accordance with said determination. And said defendant, Minneapolis & St. Louis Railroad Company has refused and still continues to refuse to receive, haul and deliver hard coal in car-load lots at and for the proportion of said joint through rate so allowed, fixed and established by the order of said railroad and warehouse commission as its joint, reasonable and fair proportion of the joint through rate established by said commission as hereinbefore alleged; and has in all things neglected and refused and still continues to neglect and refuse to obey or carry out the orders of said railroad and warehouse commission made and entered in the proceedings hereinbefore set forth.

9 That there is no plain, speedy and adequate remedy in the course of law by which the petitioner herein can compel the defendants to obey the orders of said commission as contained in said Exhibit "B."

Wherefore, your petitioner prays that this honorable court make and enter its order directed to said defendant railroad companies, and each of them, commanding and directing that they forth-

with adopt and publish as provided by law the joint through rate on shipments of hard coal in car-load lots from the city of Duluth to the points in said State of Minnesota, named in said order, Exhibit "B," at the rate, sum and amount declared to be reasonable in said order, Exhibit "B;" and that from and after this time said defendant railroad companies, their officers, agents and servants, receive and carry and deliver hard coal in car-load lots from said city of Duluth to the points, stations and towns named in said order, Exhibit "B" at and for the price described and named in said order Exhibit "B," and that said defendant railroad companies, their and each of their officers, agents, employés and servants, refrain from asking, demanding or receiving any greater sum for such through shipments of hard coal in car-load lots from said city of Duluth to the points, stations and places named in said order, Exhibit "B," than the respective amounts specified therein as reasonable and just for such shipment, or to show cause before this court at a time
10 and place to be specified, if any there be, why such order should not be made, and for such other and further relief in the premises as may be just.

RAILROAD AND WAREHOUSE COMMISSION,
By IRA B. MILLS, *Chairman.*
W. B. DOUGLAS, *Attorney General.*

C. D. AND THOS. D. O'BRIEN, *Of Counsel.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Ira B. Mills, being duly sworn, on oath says that he is one of the railroad and warehouse commissioners of the State of Minnesota, and has read the foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge.

IRA B. MILLS.

Subscribed and sworn to before me this 21st day of June, A. D. 1899.

THOS. YAPP,
[SEAL.] *Notary Public, Ramsey County, Minnesota.*

EXHIBIT "A."

STATE OF MINNESOTA:

Before the Railroad and Warehouse Commission.

In the matter of the reasonableness of the freight rate charged on hard coal from Duluth to New Ulm by the Chicago & North-
11 western and the Chicago, St. Paul, Minneapolis & Omaha Railroad Companies, and the St. Paul & Duluth and the Minneapolis & St. Louis and the Minneapolis, New Ulm & Southwestern Railroad Companies.

The railroad and warehouse commission of the State of Minnesota, having been advised by a resolution of the Commercial Union

of the City of New Ulm, in the county of Brown, that the rates on hard coal from the city of Duluth to said city of New Ulm via the Chicago & Northwestern and Chicago, St. Paul, Minneapolis & Omaha railroads and via the St. Paul & Duluth and Minneapolis & St. Louis and the Minneapolis, New Ulm & Southwestern Railroad Companies is $2.50 per ton, and that said Commercial Union deem that said rate is unreasonable and unjust and is twenty-five cents a ton more than the rate now established by the Chicago & Northwestern to the station of Traverse, a short distance east of said city of New Ulm, and the same as the village of Marshall, eighty miles west from the said city of New Ulm, on the Chicago & Northwestern road, and that the same rate is charged to New Ulm as to the village of Madison, a considerable distance further, and that $2.00 per ton would be a reasonable rate for the transportation of said coal;

And said commission having examined the joint tariffs on hard coal heretofore filed with said commission by said companies, and it appearing from such examination that the rates charged by them from Duluth to New Ulm are as stated by said Commercial Union and that the reasonableness of such rate is a proper subject for investigation by said commission;

And the resolution of said Commercial Union not being in
12 sufficient form to constitute a complaint under the statute in such case provided and not being verified as required by said statutes:

It is therefore resolved, by the railroad and warehouse commission that they proceed upon their own motion to investigate the reasonableness of the joint rate now charged by the Chicago & Northwestern and the Chicago, St. Paul, Minneapolis & Omaha Railroad Companies and the joint rate charged by the St. Paul & Duluth and the Minneapolis & St. Louis Railroad Companies from Duluth to the city of New Ulm on hard coal; and to that end it is ordered that copies of this resolution be served upon each of the railroad companies hereinbefore mentioned in the same manner as if complaint had been made in the usual form and that these resolutions shall stand in lieu of and serve for a complaint against said railroad companies.

And it is further ordered, that said railroad companies be and they are hereby notified that said commission have the reasonableness of said joint rate under consideration and that said companies be and they are hereby required to answer hereto within twenty days after the service thereof upon them as aforesaid, and that thereafter such proceedings be had thereon as upon complaint in such cases made and provided.

By order of the commission.

A. K. TEISBERG, *Secretary.*

Dated St. Paul, Minn., September 22nd, 1898.

13 EXHIBIT "B."

STATE OF MINNESOTA:

Before the Railroad and Warehouse Commission.

In the matter of the reasonableness of the freight charged on hard coal from Duluth to New Ulm by the Chicago & Northwestern and the Chicago, St. Paul, Minneapolis & Omaha Railroad Companies and the St. Paul & Duluth and the Minneapolis & St. Louis and the Minneapolis, New Ulm & Southwestern Railroad Companies.

In the above-entitled proceeding the commission find the following facts:

First. That the St. Paul & Duluth Railroad Company is a corporation organized under the laws of the State of Minnesota, and is operating a railroad between the city of Duluth, St. Louis county, Minnesota, to the cities of Minneapolis and St. Paul, Minnesota, and that said St. Paul and Duluth Railroad Company has track connections at Minneapolis, with the Minneapolis & St. Louis Railroad Company, a corporation organized under the laws of the State of Minnesota and operating a railroad from the cities of Minneapolis and St. Paul to Boyd in said State of Minnesota, passing through Winthrop.

Second. That the Minneapolis, New Ulm & Southwestern Railroad Company, is a corporation duly organized and existing under the laws of the State of Minnesota, and is the owner of a railroad from Winthrop in this State to New Ulm in this State; and that said company has track connections at Winthrop with the Minneapolis & St. Louis Railroad Company.

14 Third. All the allegations of fact contained in the resolution of this commission in the above-entitled matter September 22nd, 1898, are true.

Fourth. That on the 22nd day of September, A. D. 1898, the date of the commencement of these proceedings, the St. Paul & Duluth Railroad Company, Minneapolis & St. Louis Railroad Company, and the Minneapolis, New Ulm & Southwestern Railroad Company had made and still are maintaining to the stations hereinafter mentioned on the lines of the Minneapolis & St. Louis Railroad Company and the Minneapolis, New Ulm & Southwestern Railroad Company, the rates hereinafter stated, viz:

SCHEDULE "A."

From Duluth to stations.	Rate per ton.
Hopkins	$1.75
Minnetonka	2.00
Deephaven	2.00
Excelsior	2.10
Waconia	2.35
Young America	2.45

	Norwood	2.50
	Hamburg	2.50
	Green Isle	2.50
	Arlington	2.50
	Gaylord	2.50
	Winthrop	2.50
	Lafayette	2.50
	Klossner	2.50
	New Ulm	2.50
	Gibbon	2.50
15	Fairfax	2.50
	Franklin	2.50
	Morton	2.50
	Redwood	2.50
	Delhi	2.50
	Belview	2.50
	Echo	2.50
	Wood Lake	2.50
	Hanley Falls	2.50
	Hazel Run	2.50
	Clarkfield	2.50
	Boyd	2.50

Fifth. That the rates named in Schedule "B" hereto annexed and hereby made a part of these findings on hard coal from Duluth to stations named in said schedule are just and reasonable and that any greater or higher rate is unreasonable.

It is therefore ordered, that the joint rate on hard coal from Duluth to stations named in said Schedule "A" now existing on the St. Paul & Duluth and the Minneapolis & St. Louis railroad and the Minneapolis, New Ulm & Southwestern Companies be reduced and fixed at the rate shown in said Schedule "B."

Dated this 19th day of January, A. D. 1899.

By the commission:

(Signed) A. K. TEISBERG, *Secretary.*

16 SCHEDULE "B."

From Duluth to stations.	Rate per ton.
Hopkins	$1.32
Minnetonka	1.35
Deephaven	1.38
Excelsior	1.40
Waconia	1.51
Young America	1.56
Norwood	1.57
Hamburg	1.62
Green Isle	1.63
Arlington	1.68
Gaylord	1.75
Winthrop	1.80
Lafayette	1.86

Klossner	1.91
New Ulm	1.95
Gibbon	1.87
Fairfax	1.96
Franklin	2.01
Morton	2.05
Redwood	2.11
Delhi	2.15
Belview	2.21
Echo	2.23
Wood Lake	2.29
Hanley Falls	2.33
Hazel Run	2.38
Clarkfield	2.42
Boyd	2.48

17

EXHIBIT "C."

STATE OF MINNESOTA:

Before the Railroad and Warehouse Commission.

In the matter of the reasonableness of the freight rate charged on hard coal from Duluth to New Ulm by the Chicago & Northwestern and the Chicago, St. Paul, Minneapolis & Omaha Railroad Companies and the St. Paul & Duluth and the Minneapolis & St. Louis and the Minneapolis, New Ulm & Southwestern Railroad Companies.

The railroad and warehouse commission of the State of Minnesota, having in the above-entitled proceeding on the 19th day of January, A. D. 1899, made an order fixing a joint rate on hard coal from Duluth, Minnesota, to the stations named in said order over the lines of the St. Paul & Duluth and the Minneapolis & St. Louis and Minneapolis, New Ulm & Southwestern Railroad Companies, which order was duly served upon each of the above-named companies on or before the 19th day of January, A. D. 1899, and the commission having been notified by the Minneapolis & St. Louis Railroad Company that said companies named in said order could not agree upon the division of the rates so made by the commission, and the commission having on the 4th day of March, A. D. 1899, made an order requiring the said companies to agree upon a division of the joint rates so fixed by the commission and to notify the commission in writing if they had so agreed on or before the 23rd of March, 1899, at 10 o'clock in the forenoon of that day, and if they

18 failed to so agree or failed to notify the commission of such agreement, the commission would on said date at its office in St. Paul proceed to decide and determine what was a just and proper division of said joint rates and notify said carriers to attend at said time and place and produce such evidence as they desired as to the amount or proportion of such joint rates that each interested party should receive.

On the said 23rd day of March, at the time and place named in said order, the Minneapolis & St. Louis Railroad Company and the Minneapolis, New Ulm & Southwestern Railroad Company appeared by Thomas Wilson, attorney, who represented Mr. A. E. Clark, the attorney for the Minneapolis & St. Louis Railroad Company, and the St. Paul & Duluth Railroad Company appeared by Emerson Hadley, its attorney, and upon the request of the attorney for the Minneapolis & St. Louis Railroad Company and with the consent of all parties to this proceeding, the hearing on said order was continued until the 27th day of March, 1899, at the office of the commission in St. Paul, and upon said last-named date the commission proceeded to hear the evidence in the matter under consideration, and it appearing by the evidence that said railroad companies were still unable to agree, and that the Minneapolis & St. Louis Railroad Company is the owner and operates the Minneapolis, New Ulm & Southwestern Railroad Company, and after taking into consideration all the evidence offered and the value of the terminal facilities and all the circumstances of the haul, the commission find that a reasonable and proper division of the rates so made by the commission is that the St. Paul & Duluth Railroad Company should be allowed one
19 dollar of the said rate and the balance of said rate should go to the Minneapolis & St. Louis Railroad Company.

That the arrangement for interchange and the compensation or mileage for the use of cars as it existed under the joint tariff heretofore existing between said railroad companies is found to be reasonable and ordered continued under the joint rates established by the order of the Commission.

Dated April 8th, 1899.

By the commission:

(Signed) A. K. TLISBERG, *Secretary.*

EXHIBIT "D."

STATE OF MINNESOTA:

Before the Railroad and Warehouse Commission.

In the matter of the reasonableness of the freight rate on hard coal from Duluth to New Ulm by the Chicago & Northwestern and Chicago, St. Paul, Minneapolis & Omaha Railroad Companies and the St. Paul & Duluth and Minneapolis & St. Louis and the Minneapolis, New Ulm & Southwestern Railroad Companies.

Whereas, in the above-entitled proceedings after a hearing duly had, the railroad and warehouse commission of the State of Minnesota by order dated the 19th day of January, A. D. 1899, declared the joint rates and charges hereinafter named to be equal and reasonable joint rates over the lines of the St. Paul & Duluth and the Minneapolis & St. Louis and Minneapolis, New Ulm & South-
20 western railroads on hard coal from Duluth to the stations hereinafter designated, viz:

From Duluth to stations.	Rate per ton.
Hopkins	$1.32
Minnetonka	1.35
Deephaven	1.38
Excelsior	1.40
Waconia	1.51
Young America	1.56
Norwood	1.57
Hamburg	1.62
Green Isle	1.63
Arlington	1.68
Gaylord	1.75
Winthrop	1.80
Lafayette	1.86
Klossner	1.91
New Ulm	1.95
Gibbon	1.87
Fairfax	1.96
Franklin	2.01
Morton	2.05
Redwood	2.11
Delhi	2.15
Belview	2.21
Echo	2.23
Wood Lake	2.29
Hanley Falls	2.33
Hazel Run	2.38
Clarkfield	2.42
Boyd	2.48

21 and ordered that the rates on hard coal from Duluth to said named stations be reduced and fixed at the amounts named; and whereas, said order was duly served on each of said railroad companies and more than thirty (30) days have expired since such service and no appeal has been taken from said order and the said roadroad companies have failed and neglected to adopt the rates and charges fixed by said order;

And whereas, the commission by an order dated April 8, 1899, fixed the division of the said rates between said railroad companies, and said rates are now in full force and effect after the publication of this order and it is unlawful for said railroad companies to charge any greater rate for the transportation of hard coal from Duluth to the stations above named than the rates above named;

It is therefore ordered, that the rates and charges fixed by the commission be published by a publication of this order for one week in the New Ulm Review, a weekly newspaper printed and published in New Ulm, Brown county, Minnesota.

Dated St. Paul, Minnesota, this 10th day of April, 1899.

By order of the commission:

A. K. TEISBERG, *Secretary.*

(Title of Cause.)

Alternative Writ of Mandamus.

The State of Minnesota to The Minneapolis & St. Louis Railroad Company and The St. Paul & Duluth Railroad Company, the defendants above named, Greeting:

22

Whereas, it manifestly appears to us by the petition of the railroad and warehouse commission of the State of Minnesota,

That George L. Becker, Ira B. Mills, and Peter M. Ringdahl are the duly-appointed, qualified, and acting railroad and warehouse commissioners of the State of Minnesota, and as such constitute the railroad and warehouse commission of said State;

That A. K. Teisberg is the duly appointed, qualified, and acting secretary of such commission;

That the St. Paul & Duluth Railroad Company is a railroad corporation and common carrier of freight and passengers for hire, duly created, organized, and existing under and by virtue of the laws of the State of Minnesota, and engaged in operating a railroad in said State of Minnesota, the main line of which extends from the city of Duluth, in the county of St. Louis, Minnesota, to the cities of St. Paul, in Ramsey county, and of Minneapolis, in Hennepin county, in said State;

That the Minneapolis & St. Louis Railroad Company is a railroad corporation and common carrier of freight and passengers for hire, duly created, organized, and existing under and by virtue of the laws of the State of Minnesota, and engaged in operating a railroad in said State of Minnesota, one of its said lines of road extending from said cities of St. Paul and Minneapolis through the counties of Ramsey, Hennepin, Carver, Scott, Le Sueur, Waseca, and Freeborn, to Boyd, in said county of Freeborn;

That from said main line branch lines of road extend through various other counties of said State, one of said lines extend-

23

ing to the town of Winthrop, in Blue Earth county, in said State;

That the Minneapolis, New Ulm & Southwestern Railroad Company is a railroad corporation and common carrier of freight and passengers for hire, created, organized and existing under and by virtue of the laws of the State of Minnesota, and the owner of the road extending from said town of Winthrop to the city of New Ulm, in Brown county, Minnesota;

The defendant, The Minneapolis & St. Louis Railroad Company, is the owner of all the capital stock of said Minneapolis, New Ulm & Suthwestern Railroad Company and is in the active management and control of and actually operates said railroad from said Winthrop to New Ulm;

That said companies are, and have been for all the times herein stated, common carriers of passengers and freight and engaged in doing a freight business over said lines of road, and under traffic agreements with each other, have been engaged in carrying various

kinds of freight, particularly hard coal, from said city of Duluth to the points above described on said Minneapolis & St. Louis railroad and said Minneapolis, New Ulm & Southwestern railroad, as well as all intermediate points on said two last-mentioned railroads for a joint through rate established as hereinbefore stated by an agreement between said St. Paul & Duluth Railroad Company and said Minneapolis & St. Louis Railroad Company;

That said defendant companies and each of them have full and ample means and facilities for the carrying on of said freight business, including rolling stock, as well as complete terminals at terminal points, and track connections and yards at all connecting
24 points; and are fully able to and for a long time past have been engaged in making such freight shipments in car-load lots without any change of cars, and are fully prepared and equipped and able to accept shipments of the character above described, and for a long time past and until the fixing of the rates therefor by said railroad and warehouse commission, as hereinafter stated, said defendant companies did receive such freight and make such hauls and shipments and had established therefor rates which were known and published as joint through rates;

That amongst other rates agreed upon by said companies, a joint through rate for hard coal in car-load lots had been established and agreed upon from said city of Duluth to each and every point upon the line of said Minneapolis & St. Louis railroad and upon the line of said Minneapolis, New Ulm & Southwestern railroad in said State of Minnesota; which said joint rate it was the practice of said defendant companies to divide between them in such proportion as they had theretofore agreed upon. And each of said defendant companies during all of said times was and still is fully equipped and competent and able to carry said coal and accept all shipments thereof and do and perform all of the things necessary in and about the receiving, hauling and delivering of said coal as the same might be demanded and as public necessity might require.

That on the 22nd day of September, 1898, the railroad and warehouse commission of the State of Minnesota, by a resolution duly passed and adopted by said commission, adjudged and determined that said commission should investigate the joint through rate charged by said defendant companies as freight for hard coal
25 in car-load lots from said city of Duluth to said city of New Ulm, which said resolution was duly served upon each of said defendant companies, and thereafter and within twenty days after the service thereof said defendant companies duly appeared in said proceedings before said commission and duly submitted their respective answers, in which the claims of said defendant companies were set forth with reference to the matter so to be investigated and determined by said commission;

That thereafter said matter came on duly to be heard before said railroad and warehouse commission, and said commission having duly heard and considered all of the evidence produced upon said matter, and having duly considered the same, did thereafter and on the 19th day of January, 1899, duly make and enter its order

wherein and whereby it was determined what was a reasonable and fair joint through rate over said lines of road from said city of Duluth to the various points upon the lines of said Minneapolis & St. Louis railroad and said Minneapolis, New Ulm & Southwestern railroad, mentioned in said order, which said order was in the words and figures following, to wit:

"STATE OF MINNESOTA:

Before the Railroad and Warehouse Commission.

In the matter of the reasonableness of the freight charges on hard coal from Duluth to New Ulm by the Chicago & Northwestern and the Chicago, St. Paul, Minneapolis & Omaha Railroad Companies and the St. Paul & Duluth and the Minneapolis & St. Louis and the Minneapolis, New Ulm & Southwestern Railroad Companies.

26 In the above-entitled proceeding the commission find the following facts:

First. That the St. Paul & Duluth Railroad Company is a corporation organized under the laws of the State of Minnesota, and is operating a railroad between the city of Duluth, St. Louis county, Minnesota, to the cities of Minneapolis and St. Paul, Minnesota, and that said St. Paul & Duluth Railroad Company has track connections at Minneapolis with the Minneapolis & St. Louis Railroad Company, a corporation organized under the laws of the State of Minnesota and operating a railroad from the cities of Minneapolis and St. Paul to Boyd, in said State of Minnesota, passing through Winthrop.

Second. That the Minneapolis, New Ulm & Southwestern Railroad Company is a corporation duly organized and existing under the laws of the State of Minnesota and is the owner of a railroad from Winthrop, in this State, to New Ulm, in this State; and that said company has track connections at Winthrop with the Minneapolis & St. Louis Railroad Company.

Third. All the allegations of fact contained in the resolution of this commission in the above-entitled matter September 22nd, 1898, are true.

Fourth. That on the 22nd day of September, A. D. 1898, the date of the commencement of these proceedings, the St. Paul & Duluth Railroad Company, Minneapolis & St. Louis Railroad Company, and the Minneapolis, New Ulm & Southwestern Railroad Company had made and still are maintaining to the stations hereinafter mentioned on the lines of the Minneapolis & St. Louis Railroad Company and the Minneapolis, New Ulm & Southwestern Railroad Company, the rates hereinafter stated, viz:

27

SCHEDULE "A."

From Duluth to stations.	Rate per ton
Hopkins	$1.75
Minnetonka	2.00
Deephaven	2.00
Excelsior	2.10
Waconia	2.35
Young America	2.45
Norwood	2.50
Hamburg	2.50
Green Isle	2.50
Arlington	2.50
Gaylord	2.50
Winthrop	2.50
Lafayette	2.50
Klossner	2.50
New Ulm	2.50
Gibbon	2.50
Fairfax	2.50
Franklin	2.50
Morton	2.50
Redwood	2.50
Delhi	2.50
Belview	2.50
Echo	2.50
Wood Lake	2.50
Hanley Falls	2.50
Hazel Run	2.50
Clarkfield	2.50
Boyd	2.50

28 Fifth. That the rates named in Schedule "B" hereto annexed and hereby made a part of these findings on hard coal from Duluth to stations named in said schedule are just and reasonable and that any greater or higher rate is unreasonable.

It is therefore ordered, that the joint rate on hard coal from Duluth to stations named in said Schedule "A" now existing on the St. Paul & Duluth and the Minneapolis & St. Louis railroad and the Minneapolis, New Ulm & Southwestern Companies be reduced and fixed at the rate shown in said Schedule "B."

Dated this 19th day of January, A. D. 1899.

By the commission:

A. K. TEISBERG, *Secretary.*

SCHEDULE "B."

From Duluth to stations.	Rate per ton.
Hopkins	$1.32
Minnetonka	1.35
Deephaven	1.38

Excelsior		1.40
Waconia		1.51
Young America		1.56
Norwood		1.57
Hamburg		1.62
Green Isle		1.63
Arlington		1.68
Gaylord		1.75
Winthrop		1.80
Lafayette		1.86
Klossner		1.91
	New Ulm	1.95
29	Gibbon	1.87
	Fairfax	1.96
Franklin		2.01
Morton		2.05
Redwood		2.11
Delhi		2.15
Belview		2.21
Echo		2.23
Wood Lake		2.29
Hanley Falls		2.33
Hazel Run		2.38
Clarkfield		2.42
Boyd		2.48"

That in the proceedings to determine said reasonable joint rate hereinbefore described, said railroad and warehouse commission had full jurisdiction of the matters to be determined and the matters determined in and by said order, and full jurisdiction of said defendant railroad companies, and all of said proceedings were duly and legally conducted, of all of which said defendant companies had due notice and knowledge;

That said order and determination was duly served upon each of the defendant companies on the 19th day of January, 1899; that more than thirty days have elapsed since the making and service of said order and no appeal has been taken by either of said defendant companies from said order. And thereafter and on the 23rd day of February, 1899, said railroad and warehouse commission duly made and entered its order promulgating the said order and determination herein set forth, and duly caused such order of promul-
30 gation to be published in the New Ulm Review, a weekly newspaper printed and published in New Ulm, Brown county, Minnesota, that being one of the stations or points named in said order, the rate to which had been fixed and determined by said order. The said New Ulm Review was and is a weekly newspaper of general circulation in said Brown county printed in the English language and had been so published and circulated for more than one year prior to the publication of said order, and the publication in said New Ulm Review was full, due and legal publication and promulgation of said order hereinbefore mentioned;

That thereafter it being duly made to appear to said railroad and warehouse commission that said railroad companies were unable to and had failed to agree upon a proper division between themselves of the joint through rates so established by said commission, such proceedings were had that said defendant companies were cited to be and appear before said commission on the 23rd day of March, 1899, at 10 o'clock in the forenoon of that day, at the office of the said commission in the city of St. Paul, Minnesota, and were at the same time duly notified that if they failed to agree on such division of such joint through rate on or before said 23rd day of March, 1899, that said railroad and warehouse commission would at such time and place proceed to consider and determine in what proportion such division should be made between said defendant companies;

That said defendant companies duly appeared before said commission at said time and place, and it appearing that no division of said rates had been agreed upon, said railroad and warehouse commission duly proceeded to hear the evidence produced upon said matter, and having duly considered the same, thereafter
31 and on the 8th day of April, 1899, duly made and entered their order of determination upon said division, wherein and whereby it was determined that of the joint through rate so fixed and determined by said railroad and warehouse commission to the various points named therein, the defendant, The St. Paul & Duluth Railroad Company, should be allowed and have one dollar ($1.00) of said rate, and that the balance of said rate should go and be received by the Minneapolis & St. Louis Railroad Company; which said order was thereafter and on the 10th day of April, 1899, duly served upon each of said defendant companies. That more than thirty days have elapsed since the service of said last-mentioned order on said defendant companies and no appeal has in any manner been taken therefrom by either of said defendant companies and the same is now in full force and effect;

That thereafter and on the 10th day of April, 1899, said railroad and warehouse commission again duly promulgated the order made by it fixing and establishing the joint through rates hereinbefore described, and duly caused such schedule of rates together with such order of promulgation to be duly published in said New Ulm Review, and the same was so published in said New Ulm Review on the 12th day of April, 1899;

That the orders and judgments of said railroad and warehouse commission herein referred to are all in full force and effect and were each and all duly made and entered in the course of said proceedings as said railroad and warehouse commission had full authority, jurisdiction and right to do. That no appeal has been taken from any of said orders, nor have any proceedings whatever
32 been instituted to stay the operation of the same, and each of said orders is binding and conclusive upon each of said defendant companies herein;

That notwithstanding that fact, said defendant railroad companies, their officers, agents and employés have failed, neglected and refused, and still fail, neglect and refuse to adopt the schedule of rates

so fixed by said railroad and warehouse commission or keep for public inspection schedules showing such rates, and have refused, failed and neglected, to file with the railroad and warehouse commission copies of schedules of their classifications, rates, fares and charges for the hauling of hard coal in car-load lots in accordance with said determination. And said defendant Minneapolis & St. Louis Railroad Company has refused and still continues to refuse to receive, haul and deliver hard coal in car-load lots at and for the proportion of said joint through rate so allowed, fixed and established by the order of said railroad and warehouse commission as its joint, reasonable and fair proportion of the joint through rate established by said commission as hereinbefore alleged; and has in all things neglected and refused and still continues to neglect and refuse to obey or carry out the orders of said railroad and warehouse commission made and entered in the proceedings hereinbefore set forth.

That there is no plain, speedy and adequate remedy in the course of law by which the petitioner can compel the defendants to obey the order of said commission as hereinbefore set forth.

Now therefore, you, the defendants above named, and each of you, are hereby commanded to, immediately after the receipt of this writ, adopt and publish and keep for public inspection, as
33 provided by law, as the joint through rate to be charged by you as freight for the hauling of hard coal in car-load lots from the city of Duluth, Minnesota, to the points hereafter named, the following rates and charges, to wit:

	Rate per ton.
Hopkins	$1.32
Minnetonka	1.35
Deephaven	1.38
Excelsior	1.40
Waconia	1.51
Young America	1.56
Norwood	1.57
Hamburg	1.62
Green Isle	1.63
Arlington	1.68
Gaylord	1.75
Winthrop	1.80
Lafayette	1.86
Klossner	1.91
New Ulm	1.95
Gibbon	1.87
Fairfax	1.96
Franklin	2.01
Morton	2.05
Redwood	2.11
Delhi	2.15
Belview	2.21
Echo	2.23
Wood Lake	2.29
Hanley Falls	2.33

Hazel Run	2.38
Clarkfield	2.42
Boyd	2.48

34 And that you make and file with the railroad and warehouse commission copies of said schedules, rates, fares and charges, and that from and after the receipt of this writ you receive, haul and transport hard coal in car-load lots from the city of Duluth to the points and stations above named at and for the rate, fare and charge herein set forth; and that for the carrying of such freight no higher or greater rate shall be asked, demanded or received by either of you; and that said respective amounts shall be charged and received as the joint through rate to be charged for such service and shall be divided between you, the said defendant companies, in the proportion hereinbefore set forth, and that you comply in all other respects with the said orders of said railroad and warehouse commission, copies of which are attached to the petition herein, or in case of your failure so to do, you, and each of you, show cause, if any there be, before this court at a special term thereof to be held in the courthouse in the city of St. Paul on Saturday the 1st day of July, A. D. 1899, at 10 o'clock in the forenoon for such failure; and that you then and there make return to this writ with your certificate on such return of having done as you were commanded.

Witness the Honorable Hascal R. Brill, judge of the district court, of the second judicial district of the State of Minnesota in and for the county of Ramsey, this 23rd day of June, A. D. 1899.

[Seal of District Court of Ramsey Co., Minn.]

EDWARD G. ROGERS, *Clerk*,
By G. A. LIMBERG, *Deputy Clerk*.

35 On the filing of the petition hereto annexed, the clerk of the district court of the second judicial district of the State of Minnesota, in and for the county of Ramsey, is directed to issue an alternative writ of mandamus which is hereby allowed in the foregoing form, returnable at special term of said court in the city of St. Paul on Saturday, the 1st day of July, 1899, at 10 o'clock a. m., and the service thereof is hereby directed to be made by delivering to and leaving with L. F. Day, Esq., general manager of the Minneapolis & St. Louis Railway Company at Minneapolis in Hennepin county, Minnesota, and with A. B. Plough, Esq., general manager of the St. Paul & Duluth Railroad Company at St. Paul, Ramsey county, Minnesota, respectively, a copy of said writ together with a copy of this order and a copy of the petition on which said writ was allowed, on or before the 24th day of June, A. D. 1899.

Dated St. Paul, Minnesota, June 23rd, A. D. 1899.

HASCAL R. BRILL,
Judge of the District Court.

(Title of Cause.)

Separate Answer of the Minneapolis & St. Louis Railroad Company.

For its answer and return to the alternative writ of mandamus herein, the Minneapolis & St. Louis Railroad Company says:

George L. Becker, Ira B. Mills and Peter M. Ringdal constitute and are the railroad and warehouse commission of Minnesota. A. K. Teisberg is the secretary of said commission.

36 The St. Paul & Duluth Railroad Company is a common carrier operating a railroad between Duluth and St. Paul, Minnesota.

The Minneapolis & St. Louis Railroad Company is a common carrier operating a line of railroad from Minneapolis, Minnesota, to Angus, Iowa; it also owns and operates a line of railroad extending from Hopkins, Minnesota, on its first-named line, westerly through the State of Minnesota to Watertown, South Dakota. It owns and operates a branch line from Winthrop, on said last-named line, to New Ulm, Minnesota. Said branch line was prior to June 1st, 1899, owned by the Minneapolis, New Ulm & Southwestern Railroad Company, all the capital stock of which last-named company was owned by this defendant. Said The Minneapolis & St. Louis Railroad Company has connections and traffic agreements with other lines of railroad by which it has access to New York, Chicago, and all the principal business centers of the United States, and is engaged in both interstate and local traffic.

Prior to March 3d, 1899, the St. Paul & Duluth Railroad Company, the Minneapolis & St. Louis Railroad Company, and the Minneapolis, New Ulm & Southwestern Railroad Company had voluntarily made and put into effect a joint tariff on hard and soft coal and coke, in car-loads, between Duluth on Lake Superior and points on the lines of the Minneapolis & St. Louis and the Minneapolis, New Ulm and Southwestern railroads. Earnings under such joint tariff were divided between the carriers participating in the transportation. The rate fixed by such tariff and collected for the transportation of hard coal over the respective railroads of the three above-described railroad companies from Duluth to the points

37 named in "Schedule A" referred to and made a part of the petition for the alternative writ of mandamus is correctly shown in said schedule and is as follows:

From Duluth to stations.	Rate per ton.
Hopkins	$1.75
Minnetonka	2.00
Deephaven	2.00
Excelsior	2.10
Waconia	2.35
Young America	2.45
Norwood	2.50
Hamburg	2.50
Green Isle	2.50

Arlington	2.50
Gaylord	2.50
Winthrop	2.50
Lafayette	2.50
Klossner	2.50
New Ulm	2.50
Gibbon	2.50
Fairfax	2.50
Franklin	2.50
Morton	2.50
Redwood	2.50
Delhi	2.50
Belview	2.50
Echo	2.50
Wood Lake	2.50
Hanley Falls	2.50
Hazel Run	2.50
Clarkfield	2.50
Boyd	2.50

38 The stations above named are situated upon the line of the Minneapolis & St. Louis railroad except the stations of Lafayette, Klossner, and New Ulm, which are situated on the Minneapolis, New Ulm & Southwestern railroad.

Earnings for carrying hard coal in car-loads under the joint tariff were divided as follows: The St. Paul & Duluth Railroad Company received one dollar per ton for transportation over its railroad from Duluth to Minneapolis. Earnings in excess of one dollar per ton were paid to the Minneapolis & St. Louis, and the Minneapolis, New Ulm and Southwestern Railroad Companies.

The distance by the line of the St. Paul & Duluth railroad from Duluth to St. Paul is one hundred and fifty-two miles, and to Minneapolis one hundred and sixty miles. The rate to the two cities is the same. Both cities are distributing and transfer points from which coal shipments coming to Minnesota by the Great Lakes are distributed to local points on the various railroads throughout the State.

Coal is transported by the St. Paul & Duluth Railroad Company from Duluth to St. Paul and Minneapolis in vast quantities by through trains doing no local business, the volume of such traffic being so great that it can be handled profitably at a low rate. The local tariff of the St. Paul & Duluth Railroad Company for the transportation of hard coal from Duluth to St. Paul and Minneapolis is and has been at all times referred to in the pleadings herein one dollar and twenty-five cents per ton and said tariff is just and reasonable.

39 In order to induce this defendant to enter into said joint tariff to the end that the St. Paul & Duluth Company might secure the business of transporting coal to supply the territory tributary to this defendant's railroad, it agreed upon the division of earnings herein stated.

Hard coal transported by the defendants herein and the Minne-

apolis, New Ulm and Southwestern Railroad Company under the joint tariff was delivered to this defendant at its yards in Minneapolis. Coal destined to Lafayette, Klossner and New Ulm was delivered by this defendant to the Minneapolis, New Ulm & Southwestern Railroad Company at Winthrop.

Distances from Minneapolis to the stations enumerated in "Schedule A" are as follows:

Hopkins	8.7 miles.
Minnetonka	11.7 "
Deephaven	15.8 "
Excelsior	18.8 "
Waconia	31.5 "
Young America	39.1 "
Norwood	40.3 "
Hamburg	43.8 "
Green Isle	48.1 "
Arlington	54.3 "
Gaylord	62.3 "
Winthrop	69.3 "
Lafayette	76.1 "
Klossner	82.1 "
New Ulm	88 "
Gibbon	77.4 "
Fairfax	86.9 "
Franklin	94.9 "
Morton	100.4 "
Redwood	106.8 "
40 Delhi	113.3 "
Belview	119.9 "
Echo	123.4 "
Wood Lake	129.7 "
Hanley Falls	134.8 "
Hazel Run	141.0 "
Clarkfield	146.2 "
Boyd	152.6 "

The rate fixed by the joint tariff in effect prior to March 3rd, 1899, for the transportation of hard coal from Duluth to the points upon the line of railroad of this defendant and to points upon the Minneapolis, New Ulm and Southwestern railroad designated in said "Schedule A" were and are reasonable and just. Such rates are not exorbitant or excessive, nor do they yield or afford anything in excess of a reasonable, just and fair compensation and return for the service rendered.

That part of the joint rate in excess of one dollar per ton paid to the St. Paul & Duluth Railroad Company for its service was and is a just and reasonable compensation for the service rendered by this defendant and the Minneapolis, New Ulm & Southwestern Railroad Company in transporting hard coal from Minneapolis to points on the lines of said two last-named railroads. The charges made and collected for that service were not exorbitant or unreasonable nor

did they yield more than a fair and reasonable compensation for such service.

It is admitted that on September 22nd, 1898, the railroad and warehouse commission adopted the resolution a copy of which is attached to the petition for the alternative writ of mandamus as
41 "Exhibit A." It is also admitted that said resolution was served upon this defendant and that pursuant to such service this defendant appeared before said commission and answered thereto as follows:

MINNEAPOLIS, MINN., *October 12th*, 1898.

In the matter of the reasonableness of the freight rate charged on hard coal from Duluth to New Ulm by the Chicago & Northwestern and the Chicago, St. Paul, Minneapolis & Omaha railways, and the St. Paul & Duluth, Minneapolis & St. Louis railroads, and the Minneapolis, New Ulm & Southwestern Railroad Company.

Mr. Ira B. Mills, Mr. Nathan Kingsley, Mr. George L. Becker, State warehouse and railroad commissioners, St. Paul, Minnesota:

DEAR SIRS: Acknowledging your resolution under date of September 22nd on the above subject and replying thereto, we beg to submit to your honorable body that the present rate of $2.50 per ton on hard coal from Duluth to New Ulm is not, in our judgment, excessive and does not afford the carriers undue revenue for their services.

The shortest distance from Duluth to New Ulm is via the St. Paul & Duluth, Minneapolis & St. Louis, and Minneapolis, New Ulm & Southwestern railroads, being two hundred and fifty miles.

We hold that the aforesaid rate is not excessive in itself for this distance, as it does not afford undue compensation to any of the carriers that participate in a division of the same, viz., the St. Paul & Duluth, Minneapolis & St. Louis and Minneapolis, New Ulm
42 & Southwestern Railroad Companies. The Minneapolis, New Ulm & Southwestern railroad has not paid its operating expenses since it was built and has made no returns upon the capital invested whatever. To reduce the earnings on anthracite coal shipments would entail a greater hardship to the owners of that property, who, as already stated, have not received any return whatever on their investment since the road was built.

A reduction in the hard-coal rate to New Ulm would also entail a material loss of revenue to the Minneapolis & St. Louis Railroad Company, by reason of its reducing the rate to so large a number of points on the Minneapolis & St. Louis railroad intermediate between Duluth and New Ulm and where the New Ulm rate now applies, such rate reaching from New Ulm as far eastward as Norwood.

It is true that the rate from Duluth to Madison, Minnesota, a distance of three hundred and thirty-three miles, is the same as to New Ulm, a distance of two hundred and fifty miles, but the Minneapolis & St. Louis Railroad Company is not responsible for the rate at

Madison. It is unreasonably low for the distance that the commodity has to be transported over the St. Paul & Duluth, Minneapolis & St. Louis and Wisconsin, Minnesota & Pacific railways. It is made necessary, however, by reason of this rate prevailing at a point opposite Madison, namely Appleton, situated on the Great Northern railway, the distance from Duluth via the Great Northern railway to Appleton being two hundred and fifty miles. The same rate must be made to Madison as to Appleton to afford dealers located at Madison, on the Wisconsin, Minnesota & Pacific railroad, an
43 opportunity to distribute their coal in territory equidistant between Madison and Appleton and other towns in that vicinity. The rate from Duluth to New Ulm is not excessive in comparison with the rate of Appleton, about the same distance from Duluth as New Ulm.

It is believed by this company that your honorable body will give due consideration to the facts as set forth and will, we trust, coincide with our views as above expressed.

Yours truly,

(Signed) W. M. HOPKINS,
General Freight Agent."

It is true that on January 19th, 1899, the railroad and warehouse commission made an order and decision by which it assumed to determine and establish a joint through rate for the transportation of hard coal from Duluth to the several stations upon the lines of railroad of this defendant and the Minneapolis, New Ulm & Southwestern Railroad Company, designated in "Schedule A."

It is admitted that "Schedule B" attached to the petition for the alternative writ of mandamus is a true copy of said order and that the order was duly served on this defendant; also that an order promulgating the same was made and published as set forth in said petition.

March 3rd, 1899, this defendant canceled and withdrew from the joint tariff previously made with the St. Paul & Duluth Railroad Company and the Minneapolis, New Ulm and Southwestern Railroad Company for the transportation of hard coal from Duluth to the points named in "Schedule A" and this defendant has not at any time since said last-named date had any joint rate or
44 agreement with said St. Paul & Duluth Railroad Company for the transportation of hard coal from Duluth to said points and has no such joint rate or agreement and has at all times declined and refused and now declines and refuses to enter into such joint tariff or agreement.

It is admitted that the railroad and warehouse commission made and promulgated the orders attached to the petition for the alternative writ of mandamus as "Exhibit C" and "Exhibit D," respectively, and that publication thereof was made as stated in the petition.

This defendant denies that the several orders of the railroad and warehouse commission hereinbefore referred to are binding or conclusive upon this defendant. On the contrary, said orders by which

said commission assumes to compel this defendant to enter into a joint tariff with the St. Paul & Duluth Railroad Company and to make a joint through rate with the last-named company for the transportation of hard coal from Duluth to local stations upon the line of the Minneapolis & St. Louis, and the Minneapolis, New Ulm & Southwestern railroads, and by which said commission requires the defendants herein to transport hard coal from Duluth to the points upon the railroads of this defendant and the line of the Minneapolis, New Ulm & Southwestern Railroad Company designated in "Schedule B" of the petition for the alternative writ of mandamus, at the rate and for the compensation fixed by said "Schedule B;" and by which the railroad and warehouse commission assumes to divide and apportion the rate so fixed, between the defendants herein, are, and ever have been, wholly void; and said orders and each of them, that is to say, the orders referred to in the petition for the alternative writ of mandamus herein and identified as "Exhibit B" (to which is attached and which includes "Schedule A" and "Schedule B") "Exhibit C" and "Exhibit D" to said petition, were made without right, authority or jurisdiction and are and ever have been wholly without force, virtue or effect as against this defendant for the following reasons:

45

1st. The railroad and warehouse commission is not under the constitution and statutes of Minnesota authorized to determine finally the question as to whether or not rates for the transportation of persons or property are reasonable. Such question is judicial and can only be determined by the courts organized in conformity with the State constitution as a part of the judicial department of State government as provided by section one, article three, and section one, article six, of such constitution.

2d. The proportion of the joint through rate fixed by the commission by its several orders hereinbefore referred to as the compensation to be paid to this defendant for the service rendered in transporting hard coal in car-loads from Minneapolis to the points upon its railroad and the Minneapolis, New Ulm & Southwestern railroad is wholly inadequate and will not afford this defendant reasonable and adequate compensation for the service rendered. Such rates are much less than the just and reasonable rates now charged and received by this defendant and by other carriers of this State for like service. If said orders be enforced and said rate made effective, this defendant will be deprived of its property without due process of law, in violation of the fourteenth amendment to the Constitution of the United States.

46

3d. The law of Minnesota embodied in chapter 91, General Laws of 1895, and particularly in subdivisions B, C and D of section three of said chapter, and any and all laws of said State which assume to confer upon the railroad and warehouse commission the power and authority to compel two or more railroad companies to enter into a joint tariff and make or adopt a joint rate for the transportation of property over the lines of said companies and which assume to authorize said commission to make a division of joint earnings between two or more railroad companies, is violative

of the fourteenth amendment to the Constitution of the United States in this: .

It denies to this defendant the right to contract in reference to its own business and thus takes its property without its consent. It compels this defendant to enter into involuntary, unreasonable and unprofitable contracts with other carriers at the instance of third parties, resulting in a loss of business and revenue on the part of the defendant. It requires this defendant to enter into involuntary contracts with other carriers designated by third parties. It assumes to fix and enforce the terms and conditions upon which such involuntary contracts shall be performed. It requires this defendant to hire and use the cars and vehicles of other carriers in the transportation of traffic upon its own line. It deprives this defendant of all right to make its own contracts with other carriers and delegates to a non-judicial body the right to fix and determine the proportion of a joint through rate which shall be paid to the defendant, thereby depriving this defendant of its property,—the right to use the same, and the right to contract in relation thereto; it denies to this defendant the equal protection of the laws which protect and insure to all
47 citizens the right to contract in relation to their property, and deprives the defendant of its property without due process of law. It abridges the privileges and immunities of this defendant as a citizen of the United States by depriving it of the right to control, conduct and manage its own business.

4th. The order of the commission establishes a rate which constitutes and is a discrimination in favor of all dealers in and consumers of hard coal at the points covered by the order, as against other dealers and consumers, citizens of this State, and discriminates against the defendant as compared with the rates allowed other carriers for like service.

5th. The lines of railroad owned and operated by this defendant extend into other States. It has in such other States terminals and instrumentalities requisite to perform its duties as a carrier of persons and property. It is engaged in interstate business. The cost, maintenance, cost of operation, fixed charges, taxes and other items of expense incurred in acquiring, constructing, maintaining and operating defendant's railroad as an entirety determine the value of the property used in transporting the traffic designated in the orders of the commission. The commission is without authority or jurisdiction to distinguish or separate domestic and interstate earnings being without jurisdiction to regulate interstate commerce. It has no jurisdiction to fix rates based upon the value and cost of operation of interstate railroads.

6th. It compels this defendant at the instance of the railroad and warehouse commission to enter into a business agreement with other carriers by which each of the parties to the agreement are obliged to accept a sum for the transportation of property over its
48 line less than the just and reasonable local rate for the same service.

7th. It compels this defendant to transport traffic originating upon the line of another railroad designated by the railroad and ware-

house commission for a different and less rate than it may lawfully collect and receive for the same service where the traffic originates upon its own line, thereby forcing defendant to give a preference and discriminate in favor of certain traffic and certain localities.

8th. It compels this defendant to charge and collect different rates per ton per mile for traffic originating upon other railroads from that collected for traffic local to its own railroad notwithstanding the service rendered is identical.

And the defendant says that in the matters and particulars stated and in so far as they assume to authorize the orders of the railroad and warehouse commission herein referred to the said laws made and enacted by the State of Minnesota are in conflict with and violative of the fourteenth amendment to the Constitution of the United States and are wholly void.

Wherefore the defendant prays that this proceeding be dismissed, and that this defendant go hence with costs.

Dated July 15th, 1899.

ALBERT E. CLARKE,
Attorney for the Minneapolis & St. Louis R. R. Co., Answering Defendant Herein.

(Duly verified.)

49 (Title of Cause.)

To W. B. Douglas, attorney general, and C. D. & Thos. D. O'Brien, attorneys for complainant:

You will please take notice that the annexed is a true copy of the proposed case and bill of exceptions in the above-entitled action which will be presented to the Hon. George L. Bunn, judge of said court, for settlement and allowance as the settled case and bill of exceptions herein, on which when so allowed the defendant will move for a new trial herein.

ALBERT E. CLARKE,
Attorney for the Minneapolis & St. Louis Railroad Company,
1104 *Guaranty Loan Building, Minneapolis, Minn.*

Dated February 5th, 1900.

(Title of Cause.)

This action came on for hearing before Hon. George L. Bunn, August 3, 1899.

Messrs. Ira B. Mills and Thomas D. O'Brien appeared in behalf of plaintiff.

Mr. A. E. Clarke appeared in behalf of defendant Minneapolis & St. Louis Railroad Company.

Messrs. Hadley & Armstrong appeared in behalf of defendant St. Paul & Duluth Railroad Company.

Mr. Clarke opened the case.

Mr. CLARKE: The Minneapolis & St. Louis Railroad Com-
50 pany, one of the defendants herein, moves the court for judgment dismissing and vacating the alternative writ of man-

damus issued in this case and setting aside and vacating the order of the railroad and warehouse commission referred to in the petition for the alternative writ of mandamus and for the enforcement of which order this action is brought. This motion is based upon the files, pleadings and records in this case, and is made upon the grounds that it appears from the pleadings and the uncontroverted facts herein that said railroad and warehouse commission of the State of Minnesota, was without authority of jurisdiction to make the order, for the following reasons:

1. The Minneapolis & St. Louis Railroad Company is an interstate carrier owning and operating a continuous line of railroad extending into and through the States of Iowa, Minnesota and South Dakota, which said railroad is equipped, maintained and operated as an entirety. That said commission cannot understandingly and rightfully establish a reasonable rate and tariff for the transportation of property over any part of the line of this defendant's railroad without making inquiry and investigation as to the value of said railroad as an entirety, its capitalization, bonded indebtedness, fixed charges, operating expenses, gross and net earnings, terminal property, equipment, and all the items of cost, maintenance, operation and expense, of every character, which enter into the transaction of its business, and because said railroad property is situate in other States than the State of Minnesota, and because all of the property of said defendant is used in the transaction of interstate business, said commission is without jurisdiction to make such inquiry and investigation.

51 2. The law of the State of Minnesota creating said railroad and warehouse commission, and from which it derives its authority, does not authorize nor assume to authorize said railroad and warehouse commission to make a special rate applicable only to a certain section or portion of the defendant's railway, nor to make a special rate for the transportation of merchandise between particular stations, nor to make a special rate applicable only to a certain class of merchandise originating at a certain point or received from certain shippers or initial carriers. The only authority conferred upon said railroad and warehouse commission by the laws of this State is authority to make and fix the maximum rate applicable to all portions of defendant's line and not to any particular portion thereof and applicable alike to all traffic passing over the line of defendant's railroad, without regard to the point of origin and without regard to the fact that the merchandise received for transportation is received from an individual or from another carrier. That the authority conferred upon said commission is general and not special, and assumes to authorize the establishment and enforcement of maximum rates upon railroads as an entirety and does not confer authority to make rates applicable only to a certain section or portion of defendant's railway nor to a certain class of shipments.

3. The order of said railroad and warehouse commission requiring this defendant to enter into a joint tariff with its codefendant, The St. Paul & Duluth Railroad Company, and by which said railroad and warehouse commission assumes to establish and put in effect a joint through rate for the transportation of hard coal from Duluth,

Minnesota, to points upon the line of this defendant and the Minneapolis, New Ulm & Southwestern railroad, which said coal is
52 to be transported over the lines of both the defendants herein and the railroad of said The Minneapolis, New Ulm & Southwestern Railroad Company, and the order of the commission by which it assumed to apportion and divide the said joint rate between the defendants in this proceeding and determine what proportion of said joint rate each of the defendants should receive for the service rendered by it, were made without right, authority, or jurisdiction, and were and are wholly without virtue or effect as against this defendant, for the following reasons:

A. The railroad & warehouse commission is not under the constitution and statutes of Minnesota authorized to determine finally the question as to whether or not rates for transportation of persons or property are reasonable. Such question is judicial, and can only be determined by the courts organized in conformity with the State constitution as a part of the judicial department of State government, as provided by section I, article III, and section I, article VI, of such constitution.

B. The law of Minnesota embodied in chapter 91, General Laws 1895, and particularly in subdivisions B, C and D, section 3, of said chapter, as well as all laws of said State which assume to confer upon the railroad & warehouse commission the power and authority to compel two or more railroad companies to enter into a joint tariff and to make or adopt a joint rate for the transportation of property over the lines of said company, and which assume to authorize said commission to make a division or apportionment of joint earnings between two or more railroad companies is violative of the fourteenth amendment to the Consti-
53 tution of the United States, in this: It denies to this defendant the right to contract in reference to its own business and thus take its property without its consent; it compels this defendant to enter into involuntary, unreasonable, and unprofitable contracts with other carriers at the instance of third parties, resulting in a loss of business and revenue on the part of defendant; it requires this defendant to enter into involuntary contracts with other carriers designated by third parties; it assumes to fix and enforce the terms and conditions upon which such involuntary contracts shall be performed; it requires this defendant to hire and use the cars and vehicles of other carriers in the transportation of traffic upon its own line; it deprives this defendant of the right to make its own contracts with other carriers, and delegates to a non-judicial body the right to fix and determine the proportion of a joint rate which shall be paid to defendant, thereby depriving this defendant of its property, the right to use the same, and the right to contract in relation thereto; it denies to this defendant the equal protection of the laws which protect and insure to all citizens the right to contract in relation to their property, and deprives the defendant of its property without due process of law; it abridges the privileges and immunities of this defendant as a citizen of the United

States, by depriving it of the right to control, conduct, and manage its own business.

C. The order of the commission establishes a rate which constitutes and is a discrimination in favor of all dealers in and consumers of hard coal at the point covered by the order, as against other dealers and consumers, citizens of this State, and discriminates
54 against the defendant as compared with the rates allowed other carriers for like service.

D. It discriminates in favor of traffic transported over the line of defendant's railroad, which traffic is received from another common carrier.

E. It compels the defendant, at the instance of the railroad & warehouse commission, to enter into a business agreement with other carriers, by which each of the parties to the agreement are obliged to accept a sum for the transportation of property over defendant's line less than the just and reasonable local rate for the same service.

F. It compels this defendant to transport traffic originating upon the line of another railroad designated by the railroad & warehouse commission for a different and less rate than it may lawfully collect and receive for the same service where the traffic originates upon defendant's own line, thereby forcing the defendant to give a preference and discriminate in favor of certain traffic and certain localities.

G. It compels this defendant to charge and collect different rates per ton per mile for traffic originating upon other railroads from that collected for traffic local to its own railroads, notwithstanding the service is identical.

Mr. O'BRIEN: The plaintiff now moves for judgment upon the petition and return, that a peremptory writ of mandamus be issued directed to the defendants, directing and commanding them as prayed in the petition. I make the motion for judgment upon the pleadings, may it please the court, for the following reasons: It is claimed upon behalf of the plaintiff that the various orders made and entered by the railroad & warehouse commission of the
55 State of Minnesota in the proceedings to fix a joint through rate upon hard coal from Duluth to various points upon the line of the defendant Minneapolis & St. Louis Railroad Company, not having been appealed from by either of the roads or common carriers affected, or by any other person, are binding and conclusive and are final and must be so considered in this proceeding.

Second, that the answers interposed respectively by the defendants set forth no defense to the application for a peremptory writ of mandamus, and that therefore it is apparent from the pleadings in this action that the State is entitled to judgment as prayed.

Mr. HADLEY: Your honor, so far as the St. Paul & Duluth Railroad Company is concerned, we do not care to make any argument on this motion, nor will we consent to the motion of the plaintiff here. The St. Paul & Duluth is in this position: The rate which has been made by the commission is the same rate which they received before; we find no particular fault with the rate, but we do not admit that the commission has the right to make a joint rate

but insist that it has no such power. We do not want to be held as consenting that the writ shall be made permanent.

After argument on the motions, by Mr. O'Brien and Mr. Clarke, the court said:

The COURT: This matter has been heard on the pleadings and I am ready to decide it, but my decision will make it necessary for you to offer testimony.

It was agreed that the testimony be taken before the court reporter, beginning August 22, 1899, and presented to the court September 20, 1899, and that all objections which might be taken to testimony may be taken when the testimony shall be presented to the court.

56 The following testimony was taken before the court reporter, beginning August 22, 1899, in district court room No. 4, St. Paul:

Messrs. Ira B. Mills and Thomas D. O'Brien appeared for plaintiff.

Mr. A. E. Clarke appeared for defendant Minneapolis & St. Louis Railroad Company.

Mr. James D. Armstrong appeared for defendant St. Paul & Duluth Railroad Company.

It is agreed that all objections to relevancy, competency and materiality may be raised upon the trial, the same as if made here to each question.

E. B. OBER, having been sworn, testified as follows:

Examined by Mr. CLARKE:

Q. You reside in St. Paul, do you, Mr. Ober?

A. Yes, sir.

Q. What is your occupation?

A. Assistant general freight agent of the Chicago, St. Paul, Minneapolis & Omaha.

A. I wish you would state as accurately as you can the number of tons of hard coal shipped into St. Paul and Minneapolis from Lake Superior points, including Duluth, Superior, West Superior and Bayfield, during the year 1898.

A. I have not any accurate statistics made up. We did not understand that you wanted those figures or we could have had it made up.

Q. Well, state it as nearly as you can.

A. Well, I don't know as I could come anywhere near the tonnage, because, of course, to carry a very large tonnage to the twin cities that does not end there.

Q. What railroads carry the hard coal from the points I have named—Duluth, West Superior, Superior and Bayfield—to St. Paul and Minneapolis?

57 A. There are three roads; the Eastern Minnesota, the St. Paul & Duluth, and the Omaha. And the Northern Pacific has recently been a factor in the business.

Q. The tonnage carried by the Northern Pacific is comparatively small, I suppose, is it not?

A. Yes. They are a new factor and they have not cut much of a figure yet.

Q. You say you have not made any computation or examination so that you cannot give the figures with comparative accuracy?

A. Well, no. I suppose I could come within a hundred thousand tons of it. Very nearly half a million tons.

Mr. O'BRIEN: Does that mean all three?

The WITNESS: No, I refer purely to our own road.

Q. That is the Omaha?

A. That means business that is carried by our road, either as far as St. Paul or Minneapolis.

Q. Does that include coal only for local consumption, or through business as well?

A. That includes all business.

Q. Everything?

A. I know pretty well what the local consumption is of the twin cities—the aggregate. That is, I know quite certainly as to the tonnage that is carried by the Lake Superior lines, all of them, in the aggregate, to the twin cities, that is consumed locally.

Q. You say you are quite certain as to the amount carried by all the Lake Superior roads for local consumption?

A. Yes, sir.

Q. What is that? What is your estimate of that?

A. About 200,000 tons.

Q. You think that 200,000 tons per annum would be a fair
58 estimate of all the hard coal carried by the Lake Superior roads for local consumption in the twin cities?

A. Yes, sir.

Q. And that an approximate estimate of the amount carried by the Omaha, for all purposes, including through business, would be half a million tons?

A. Well, say 400,000 tons. It may be a good deal more than that. It is an enormous territory; it means all territory west of the Mississippi river. That would be a very conservative figure.

Q. How long will it take you, Mr. Ober, to prepare a statement advisedly by which you could show the actual tonnage of hard coal carried by your road between points on Lake Superior and the twin cities, for all purposes, during the year 1898? That includes both for local consumption and through business—points beyond Minneapolis and St. Paul.

A. Well, that would be quite an undertaking; it means an immense amount of detail information, you know—checking up the different points to know whether the coal would go through the twin cities. We could get at it all right.

Q. Your records undoubtedly show——

A. The billings shows the destination of freight. The destination of the freight would indicate the location of points, you know, and show whether we had to carry it through St. Paul or not. The information is there, but it is——

Q. Your distributing point is St. Paul, isn't it, rather than Minneapolis?

A. Yes, sir.

Q. Or Minnesota transfer?

A. Yes, sir. Well, it is St. Paul principally.

Q. Minnesota transfer is situated between St. Paul and Minneapolis. Well, I ask you again how long it would take you to
59 make an accurate statement of that kind so that you could testify advisedly as to the number of tons of hard coal transported during the year 1898 over the Chicago, St. Paul, Minneapolis & Omaha Railroad Company, which you represent, between points on Lake Superior and to or beyond cities of St. Paul and Minneapolis.

A. Well, I am not sure in regard to some statistics that we have there in the office; if we have got them—and I have a pretty strong recollection that we started in a little over a year ago to keep them in that form—if we have them that way we could make that up in a day; if we haven't got it, why then we would need possibly ten days.

Q. Well, will you prepare such a statement and file it with the commissioner who is taking this testimony, at any time between now and the 1st day of September? Just give the number of tons; I don't ask for any details.

A. Well, I will endeavor to do it. I cannot say positively, because it may mean an immense amount of work. Mr. Hopkins can possibly tell you better what it means to get up a statement of that character. If you don't compile your information in a certain form it means an immense amount of work.

Mr. ARMSTRONG: It depends on how your statistics were kept.

The WITNESS: Yes, I shall endeavor to do it.

Mr. CLARKE: The ultimate fact that I want to show is this: I want to show how many tons of hard coal were transported during the year 1898, by all railroads, from Lake Superior points to St. Paul and Minneapolis, including coal for local consumption and through business; that is, the tonnage of hard coal transported from points on Lake Superior to or beyond St. Paul and Minneapolis. If I can get the certain number of tons I don't care whether it
60 is given in a lump or is divided up between the roads and given separately. If you can aid me in getting that in the shortest and most direct way, that is all I want.

The WITNESS: Yes, sir.

Mr. CLARKE: Now I will ask you, for my own information, whether it will be necessary to put on the freight agents of the different roads and get the figures showing the amount carried by each road separately, or whether any one of you can, if afforded proper and reasonable time and opportunity, give me the total tonnage that I ask for; just the number of tons, without any explanation or details.

The WITNESS: Well, of course I don't know anything about the other roads—what form they have got their statistics in. We would be perfectly willing to consult with the other companies and see if

we could get an aggregate figure. I know what you are after, and if they have got the figures we can put them all in one lump and make one report.

Mr. CLARKE: Well then we will leave it in that way, so far as your road is concerned; I will ask you to prepare that statement and have it ready by the first day of September to file with the commissioner who is taking this testimony, and in the meantime, if it is preferable to the representatives of the other roads, they can give you a statement of the total tonnage; I am willing to accept that instead of separate reports.

The WITNESS: All right, sir, we can consult with the other coal-carrying lines, and if they are agreeable, we can make the aggregate statement.

Mr. CLARKE: Yes, sir. I would be very glad if you would do that, and I will leave it in that way for the present.

61 FRANK NAY, having been sworn, testified as follows:

Examined by Mr. CLARKE:

Q. You are the auditor of the Minneapolis & St. Louis Railroad Company, are you not, Mr. Nay?

A. Yes, sir.

Q. And keep the records of that company and its business?

A. Yes, sir.

Q. What is the amount of the capital stock outstanding of the Minneapolis & St. Louis Railroad Company?

A. $10,000,000, June 30, 1899.

Q. What was the amount of the bonded indebtedness, the same date?

A. $17,800,000.

Q. What rate of interest does that bonded indebtedness bear?

A. Various rates; four, five, six and seven per cent.

Q. State the names of the trustees of the various mortgages, the amount of the various mortgages, and the interest upon the bonds secured by each.

A. I am not certain that I can give the trustees; I think the Central Trust Company is the trustee of all of them; that is my recollection; I would not be positive of it.

Mr. CLARKE: No, the Farmers' Loan & Trust Company is one, but it doesn't matter about that, we can supply that later. Just give it by mortgages.

WITNESS: There is the Minneapolis & Duluth mortgage, dated January 1, 1877, $280,000, interest at seven per cent. Then there is the Minneapolis & Merriam Junction mortgage, dated January 1, 1877, $455,000, interest seven per cent. Then the Merriam junction & Albert Lea mortgage, dated February 1, 1877, $1,100,000, bearing interest at seven per cent. Iowa extension mortgage, dated

62 June 2, 1879, $1,100,000, interest seven per cent. Southwestern extension mortgage, dated December 1, 1880, $636,000 interest seven per cent. Pacific extension mortgage, dated April 1

1881, $6,000,000, interest six per cent. First consolidated mortgage, dated November 2, 1894, $10,000,000, interest five per cent. First & refunding mortgage, dated March 1, 1899, $25,000,000, interest four per cent.

Q. Of the several items in relation to which you have testified, you may state whether the full bonded indebtedness represented by each is now outstanding or whether any portion of the bonds are still unissued; if so, state what are unissued?

A. The following are only partially outstanding:

Merriam junction & Albert Lea, amount outstanding.....	$950,000
Iowa extension, amount outstanding.....	1,015,000
Pacific extension, amount outstanding.....	1,382,000
First consolidated, amount outstanding.....	5,282,000
First & refunding, amount outstanding.....	7,800,000

Q. The amount actually outstanding, and which constitutes a lien upon the property of the company, is $17,800,000?

A. Yes, sir; $17,800,000.

Q. And stock $10,000,000?

A. $10,000,000.

Q. What was the cost of the road and equipment?

A. The cost to June 30, 1899, was $23,390,560.15.

Q. When did the fiscal year of the company end?

A. June 30th.

Q. What were the gross earnings of the Minneapolis & St. Louis railroad for the fiscal year ending June 30th, 1899?

A. $2,500,004.36.

Q. What, if any, other income did it have?

A. Received interest from investments, $25,952.41; in-
63 terest and exchange, $18,936.19; from trackage and various rentals, $151,708.35.

Q. What were the total receipts from all sources, including earnings, interest on investments, interest and exchange, trackage and other rentals, for the fiscal year ending June 30th, 1899?

A. $2,696,601.31.

Q. What were operating expenses for the same year?

A. $1,438,004.84.

Q. And the taxes?

A. $84,700.25.

Q. The interest on the bonded debt?

A. $659,540.

Q. What other items of expenditure were made during that year?

A. There was expended for trackage and other rentals $55,694.18.

Q. What were the total expenditures for the fiscal year?

A. $2,237,939.27.

Q. What was the net income?

A. $458,662.04.

Q. Now, if the whole of the net income, without reserving any-

thing, were devoted to the payment of dividends on capital stock, what percentage would it pay?

A. It would pay about four and one-half per cent.

Q. Would it be practicable in the operation of the railroad to apply every dollar of the net income to the payment of dividends?

A. No, sir. It never has been done to my knowledge.

Q. Have you examined the schedule of rates made by the railroad and warehouse commission of this State, which is applicable to certain stations on the line of the Minneapolis & St. Louis and Minneapolis, New Ulm & Southwestern railroads, as between Minneapolis and the points upon the lines of those railroads named in the order?

A. Yes, sir.

Q. That schedule I refer to is Schedule B attached to the
64 petition for the alternative writ of mandamus (showing witness the petition and schedule)?

A. Yes, sir; I have examined that.

Q. When did the Minneapolis, New Ulm & Southwestern railroad become the property of the Minneapolis & St. Louis Railroad Company?

A. March 1, 1899; that is when they began to treat it as a part of their system.

Q. Prior to that it was an independent corporation?

A. It was an independent corporation.

Q. The stock of which was owned by the Minneapolis & St. Louis?

A. Yes, sir.

Q. Did it prior to that date have its own officers?

A. Yes, sir.

Q. And directors?

A. Yes, sir.

Q. And was operated in all respects as an independent and separate corporation, was it not?

A. Yes, sir.

Q. Did the Minneapolis, New Ulm & Southwestern Railroad Company at any time during its existence pay operating expenses?

A. As I recently came with the road I have not examined the acaounts back to the time they first existed.

Q. Well, I will change that question, then. At the time the order of the commission was made establishing the tariff referred to as Schedule B, was the Minneapolis, New Ulm & Southwestern Railroad Company earning enough money to pay its operating expenses under the tariffs then existing and in force prior to the making of that order?

A. No, sir; it was not.

Q. What were the comparative earnings and operating expenses of the Minneapolis, New Ulm & Southwestern Railroad Company at that time?

A. I have them for ths fiscal year ending June 30, 1899. The gross earnings for that period were $33,884.10; the operating
65 expenses, taxes, and interest on bonded debt amounted to

$41,784.64; which would result in a deficit of about $8,000 for the year.

Q. After the transfer of the ownership of the Minneapolis, New Ulm & Southwestern to the Minneapolis & St. Louis the accounts were kept separate, were they?

A. Yes, sir.

Q. And the deficit you speak of is a deficit that appeared June 30, 1899?

A. Yes, sir.

Q. For the fiscal year?

A. Yes, sir.

Q. Now I will ask you upon what basis earnings relative to the transportation of property over the lines of the Minneapolis & St. Louis railroad and the Minneapolis, New Ulm & Southwestern railroad was made. Was it a mileage basis, or upon what basis?

A. Upon business from Minneapolis.

Q. Upon business passing over the line of both roads?

A. Yes, sir.

Q. Upon a mileage basis?

A. No; the Minneapolis, New Ulm & Southwestern road is allowed thirty per cent. of the revenue, regardless of what the mileage amounts to.

Q. Is allowed thirty per cent. of the revenue?

A. Yes, sir. That would be much more than its *pro rata* on a mileage basis.

Q. There was an arbitrary division, then, of rates?

A. Yes, sir.

Q. Between the Minneapolis & St. Louis Railroad Company and the Minneapolis, New Ulm & Southwestern Railroad Company?

A. Yes, sir.

Q. That applied, did it, to all business passing over both lines—the joint line made by the two lines?

A. I don't remember as to that—all business; I think it
66 did, but I would not say positively as to that. I know it applies to the business from Minneapolis to points on the New Ulm & Southwestern.

Q. You are correct in your understanding; it applied to the whole line. Now I want to ask you whether the thirty per cent. arbitrary division allowed the Minneapolis, New Ulm & Southwestern would amount to more or less than its earnings net if divided on a mileage basis.

A. It would amount to considerable more.

Q. The arbitrary division would be favorable to the Minneapolis, New Ulm & Southwestern?

A. Yes, sir.

Q. That method of keeping accounts was in force, was it not, during the year ending June 30, 1899, in which this deficit occurs?

A. Yes, sir.

Q. Have you made a computation to determine the average cost of operation per ton per mile for the fiscal year ending June 30,

1899, covering the whole system of the Minneapolis & St. Louis railroad?

A. Yes, sir.

Q. Have you made a computation showing the cost of operation per ton per mile over that portion of the line covered by the rates made by the railroad and warehouse commission?

A. Yes, sir.

Q. What is the Western division of the Minneapolis & St. Louis railroad?

A. It is the line extending from Hopkins to Morton, Minnesota.

Q. Where is Hopkins?

A. Hopkins is located about nine miles from Minneapolis, on the line of the Minneapolis & St. Louis.

Q. On the main line?

A. Yes, sir. It is at the junction of the main line and the branch running out to Morton.

67 Q. The Western division, then, is a line which runs from Hopkins, on the main line, west?

A. Yes, sir, to Morton.

Q. Did you make a computation of the average cost of operation per ton per mile upon the Western division, for the fiscal year ending June 30, 1899?

A. Yes, sir.

Q. Did you make a computation of the average cost of operation per ton per mile upon the Minneapolis, New Ulm & Southwestern division for the same period?

A. Yes, sir.

Q. Did you also make a computation of the average cost of operation per ton per mile covering that portion of the line between Minneapolis and Hopkins?

A. No, sir. The reason I did not was because the accounts are not kept separate for that portion of the line. The line is divided into accounting divisions, and the earnings and expenses of these other divisions are kept separate, but for that portion of the line they are not.

Q. Now, Hopkins, you say, is about nine miles from Minneapolis station?

A. Yes, sir.

Q. Where are the terminal facilities, the greater part of the terminal facilities, the yards, shops, round-houses, etc., of the Minneapolis & St. Louis Railroad Company situated in relation to Minneapolis and Hopkins?

A. They are right on this nine miles of line between Minneapolis and Hopkins.

Q. How many tracks has the Minneapolis & St. Louis Railroad Company between Minneapolis and Hopkins?

A. They vary from two to sixteen. They have a double track for through trains the entire distance; and then there are numerous side tracks. I understand there are as many as sixteen tracks in one place. All the yards are in there.

68 Q. Hopkins, then, is practically one end of the Minneapolis terminal yards, isn't it?

A. Yes, sir, virtually.

Q. And Minneapolis is the other one?

A. Yes, sir.

Q. How does the expense of operation and maintenance of the railroad between Minneapolis and Hopkins compare with the operation of other portions of the line?

A. Oh, it is very much heavier.

Q. Hopkins is really, so far as it may be called a station, a main-line station?

A. Yes, sir.

Q. And from there the Western division starts and extends to Morton?

A. To Morton.

Q. What was the average cost of operation per ton per mile during the fiscal year ending June 30, 1899, upon the Western division, including all kinds of merchandise?

A. 1.293 cents.

Q. What rate per ton per mile revenue would be returned to the company under the rate fixed by the commission for operation upon the Western division?

A. It would be .779 of a cent.

Q. How much more per ton per mile would the cost of operation upon the Western division be than the revenue, under the rate fixed by the commission, basing your computation upon the business of the fiscal year ending June 30, 1899?

A. It would be .514 of a cent per ton per mile.

Q. The net loss, then, per ton per mile, resulting from operation under the commission's tariff would be something over half a cent?

A. Yes, sir.

Q. What was the average cost of operation per ton per mile of the Minneapolis, New Ulm & Southwestern division for the fiscal year ending June 30, 1899?

A. 3.962 cents.

69 Q. It would lack, then, only .038 of a cent of being four cents per ton per mile—cost of operation?

A. Yes, sir.

Q. What would be the revenue per ton per mile for the business over the Minneapolis, New Ulm & Southwestern division, at the rate fixed by the railroad and warehouse commission, using the business of the fiscal year ending June 30, 1899, as the basis?

A. Of course in that revenue I did not use the fiscal year; I simply took the rate established by the commission.

Q. Oh, yes; I was thinking of something else.

A. The rate per ton per mile allotted to the Minneapolis, New Ulm & Southwestern, under the thirty per cent. basis, would be 2.103 cents.

Q. What would be the net loss, then; or, putting it in another way, how much would the expense of operation exceed the revenue under the commission's rates?

A. 1.859 cents.

Q. Where are these points or stations named in Schedule B, commencing at Hopkins, located—upon which division?

A. Those located on the Western division are Minnetonka, Deephaven, Excelsior, Waconia, Young America, Norwood, Hamburg, Green Isle, Arlington, Gaylord, Gibbon, Fairfax, Franklin, Morton—these are located on the Western division. Those located on the Minneapolis, New Ulm & Southwestern are Winthrop, Lafayette, Klossner and New Ulm.

Q. Now, upon what division are the other stations—Redwood——

A. Redwood, Delhi, Belview, Echo, Wood Lake, Hanley Falls, Hazel Run, Clarkfield and Boyd are located on what is known as the Pacific division.

Q. What is the Pacific division?

76 A. It extends from Morton, Minnesota, the terminus of the Western division, to Watertown, South Dakota.

Q. When did the Minneapolis & St. Louis Railroad Company acquire ownership of what is now known as the Pacific division, extending from Morton to Watertown?

A. On February 20, 1899.

Q. Prior to that time was it owned by another company entirely?

A. Yes, sir.

Cross-examination.

By Mr. O'BRIEN:

Q. Mr. Nay, how long have you been auditor of the Minneapolis & St. Louis Railroad Company?

A. Since May 1, 1899.

Q. Prior to that time were you connected with the road?

A. I was connected with the St. Louis Southwestern Railway Company.

Q. With headquarters where?

A. At St. Louis, Missouri.

Q. Is that road a part of what is known as the Minneapolis & St. Louis system?

A. No, sir, it has no connection with it whatever.

Q. And your first acquaintance with the Minneapolis & St. Louis road was when you took the position of auditor, last May?

A. Yes, sir.

Q. Have you any knowledge of the actual condition of the road itself? Have you been over the road?

A. Yes, sir.

Q. Sufficiently to familiarize yourself with it?

A. Well, not to familiarize myself with it. I have been over the road.

Q. Now, you speak of the capital stock, bonded indebted-

71 ness, etc., of the Minneapolis & St. Louis system. The capital stock, you say, is $10,000,000?

A. Yes, sir.

Q. Now, what do you include in the Minneapolis & St. Louis system which has a capital stock of the amount?

A. I include the line from Minneapolis, Minnesota, to Angus, Iowa——

Mr. CLARKE: Where is Angus, Iowa?

WITNESS: Angus, Iowa, is the junction of the Minneapolis & St. Louis with the Chicago, Rock Island & Pacific; the terminus of what is known as the main line.

Q. And is situated about how far from the northern boundary of Iowa?

A. It is about 140 miles from the boundary.

Q. From the State line?

A. About that. The length of the line from Minneapolis to Angus is about 259.90 miles. Then the line from Hopkins, Minnesota, to Watertown, South Dakota, 215.42 miles. A small branch from Kalo junction, Iowa, to Kalo, 1.46 miles. A branch from Manitou junction, Minnesota, to Tonka bay, Minnesota, 1.45 miles. From Winthrop, Minnesota, to New Ulm, 20.22 miles. Then the line from Minneapolis to Hopkins, a little over nine miles, is a double track.

Q. A double track, and, as you said a while ago, there are sixteen tracks at some places?

A. Yard tracks, yes, sir.

Mr. CLARK: Perhaps it is not in the records. The Minneapolis, New Ulm & Southwestern division, which was formerly the Minneapolis, New Ulm & Southwestern Railroad Company, extends from Winthrop to New Ulm?

A. Yes, sir. The capital stock is the stock that was out-
72 standing June 30, 1899, and at that time the line from Winthrop to New Ulm was a part of the Minneapolis & St. Louis railroad.

Q. Now, the capital stock that you have given represents the entire capital stock for this entire system which you have just described?

A. Yes, sir.

Q. And the amount of bonded indebtedness—$17,800,000—represents the entire bonded indebtedness that is now a lien upon the road and its branches?

A. Yes, sir.

Q. When you speak of the Western division of the Minneapolis & St. Louis road, what do you mean?

A. I mean the line extending from Hopkins, Minnesota, to Morton, Minnesota.

Q. What do you designate the line from Morton, Minnesota, to Watertown, South Dakota?

A. It is the Pacific division.

Q. The line from Hopkins to Watertown is operated as one continuous line, is it not?

A. One continuous line separated into two divisions.

Q. The trains from Hopkins to Watertown are through trains, are they not?

A. The passenger trains are.

Q. Are the freight trains?

A. The freight trains are not; they change at Morton. Even the passenger trains change engines at Morton, some of them.

Q. Well, they change engines at Morton, yes; on all long runs the engines on trains are changed, are they not?

A. Yes, sir.

Q. But, with the exception of the necessary changes because of the length of the road, that line is operated as one continuous line, is it not?

A. Yes.

Q. And all shipments which originate at any point upon the Western division and are intended for any point upon the
73 Pacific division are carried through without change of cars, are they not?

A. Yes, sir. I would not say all of them, because some may be transferred.

Q. In making your computation as to the cost per ton per mile for the hauling of freight, what have you done? How did you make that computation?

A. I will explain first that the road is divided into six accounting divisions, and the earnings and expenses of those accounting divisions are kept as entirely separate and distinct as if they were different railroads, for accounting purposes and for the purpose of giving information to the general manager as to the results from operation of each particular section. Then arriving at the cost I have simply taken the expenses of that division and have allotted to freight traffic such a proportion of the total expenses of the division as the freight earnings of that division are a portion of the total earnings of the division.

Q. In getting at the expense of operating that division, what do you take into account? Or, have you simply taken the report that had already been made as to the expense of operating the Western division?

A. I have taken the report that had already been made.

Q. Now, how was that report arrived at?

A. Well, I have a list of the operating expenses—if you care for those. (Referring to a pamphlet.) I have last year's report, which varies vary imperceptibly from this year's report.

Q. Well, I suppose the system is the same; the amounts of the items are not the same, but the same items are included?

A. Yes, sir. I have not the detail with me, but I could furnish that. The first classification is maintenance of way and
74 structures. And under that heading is: Repairs of roadway; bridges and culverts; cross-ties, renewal of; rails; buildings and fixtures; fences, crossings, signs and cattle guards; repairs, telegraph; stationery and printing; superintendence. Then the next general subdivision is maintenance of equipment, under which are the following items: Locomotives, repairs and renewal of; passenger cars, repairs and renewal of; freight cars, repairs and renewal of; work cars, repairs and renewal of; shop tools and machinery, repairs and renewals of; stationery and printing; superintendence;

other expenses. There are two other subdivisions, conducting transportation, and general expenses. Under conducting transportation, there are the following subheadings (which are classified): First, locomotive service—engine and round-house men; fuel for locomotives; water supply for locomotives; lubricants for locomotives; other supplies for locomotives. Second, train service—conductors, baggagemen and brakemen; train supplies and expenses. Then casualties—wrecking; loss and damage; injuries to persons. Then station service—switchmen, flagmen, and watchmen; telegraph expenses, operating; station supplies; station agents, clerks and laborers; terminal expenses. Then other expenses which are termed contingencies—foreign agencies; advertising; traffic expenses; car mileage; rent of buildings and other property; stationery and printing; superintendence. Then the fourth general heading is general expenses, under which are the following items: Salaries of officers; salaries of clerks and attendants; general office expenses and supplies; legal services and expenses; insurance; stationery and printing; incidentals.

75 Q. In the majority of instances, it is possible to get at exactly the proper amount which should be charged to the expense of operating any division, is it not?

A. Yes, sir.

Q. For instance, under the heading "Maintenance of way and structures," it is apparent that the items referred to there are for expenses that were actually incurred upon that particular division?

A. Yes, sir. Almost every item under that heading can be directly located.

Q. There is no question of apportionment or anything there at all?

A. No, sir.

Q. Now, "Maintenance of equipment;" some of the items are of that character, are they not? For instance, a locomotive would remain on one division?

A. Yes, sir.

Q. While cars, either passenger or freight cars, would not, they would be transferred from one division to another?

A. Yes, sir.

Q. Should tools and machinery and repairs and renewals of them also belong to that division?

A. No, the greater portion of that expense is prorated among all divisions.

Q. That is one of the expenses that is prorated?

A. That is one of the expenses that is prorated.

Q. "Stationery and printing," "Superintendence," and "Other expenses," would also be prorated, would it not?

A. Yes, sir, the majority of them.

Q. Under the head of "Conducting transportation," locomotive service, engine and round-house, men, fuel for locomotives, water supply for locomotives, lubricants for locomotives, and "Other supplies for locomotives," would all be easily ascertainable

76 as to the exact amount spent upon that particular division; would they not?

A. Yes, sir.

Q. Train service: conductors, baggagemen and brakemen, how about that item?

A. That can be easily located.

Q. Train supplies and expenses; could that item be definitely ascertained?

A. In cases of that kind, where a conductor runs over two divisions, those items are usually divided on the mileage of the two divisions; if he runs a hundred miles on one and a hundred on the other, half would be changed to one and half to the other.

Q. So that can be ascertained exactly?

A. Yes, sir.

Q. Now, casualties; is each casualty charged to the division on which it occurs?

A. Yes, sir.

Q. Station service; switchmen; flagmen and watchmen. There is no apportionment in that case; that is charged directly?

A. No; that is charged directly. The only case of apportionment would be, say, at Hopkins, at Morton—the junction stations of two divisions; the employees at those stations would be divided as to expense.

Q. Now, "station service," wouldn't the only expense which would have to be apportioned between differen parts of the road be terminal expense?

A. Well, practically all. As I just said, there are some expenses at these joint stations, the junctions of two accounting division—nearly all expenses at those stations have to be divided between the two divisions.

Q. Now, the last classification of expenses, general classification; all of those are apportioned, are they not?

A. Practically all, yes, sir.

77 Q. Practically all of those are apportioned between the different lines. Assuming, then, that in the instances where you have mentioned that the general expenses of operating the entire system have to be apportioned, and are correctly apportioned, the expense and cost of operating any particular division of the road can be ascertained to a certainty?

A. Yes, sir.

Q. Now, you have stated what was the cost per ton per mile for the carriage of freight on the western division, and have arrived at the expense of operating that division in the manner in which you have testified to here?

A. Yes, sir.

Q. What credit have you given the division, of the freight carried? In other words, what earnings have you taken into consideration for that division?

A. Earnings on all business that passed over the division.

Q. What was the amount of business which terminated on the divison?

A. I haven't the figures with me to show the amount of business that termininated on that division.

Q. How much business originated on the division?

A. I have not the figures with me to show that.

Q. Can you give us any idea of the number of tons of freight which originated north of Hopkins and which terminated above the western or Pacific division, upon that entire line?

A. Not from memory. Those things are not ground into my memory yet.

Mr. CLARKE: You have a record of it at the auditor's office?

The WITNESS: I have a record; I can furnish the information.

Q. Have you allowed, as a part of the earnings of the western division, any amount for freight which neither arose nor terminated upon the western division?

78 A. Yes, sir. For instance, if freight originated at Minneapolis, which would be on another division, and passed to Watertown, where this division would be intermediate, it receives its proportion.

Q. You have made allowances for that?

A. Yes, sir.

Q. How much have you allowed?

A. The average mileage *pro rate*——

Q. Well, what rate?

A. Well, there are various rates; they are on various commodities. The actual earnings, for example, from Minneapolis to Watertown, South Dakota, are divided among the three divisions, Minneapolis to Hopkins, Hopkins to Morton, and Morton to Watertown, South Dakota; the actual amount of earnings received on that business.

Q. And you have allowed a *pro rata* amount to the western division for all that freight?

A. Yes, sir. It received its *pro rata* for every pound that was hauled over the division or any portion of it.

Q. Have you computed the amount of the earnings from freight hauled of that branch of the Minneapolis & St. Louis system extending from Hopkins to Watertown?

A. No, sir. That is—I have computed it, yes, but I haven't the figures with me.

Q. Well, will you produce those figures?

A. Yes, sir. I had better take a memorandum of that. That is the line from Hopkins to Watertown.

Mr. CLARKE: Consisting of the two divisions.

WITNESS: Yes, sir.

Q. Will you also produce the cost of operation of the Pacific division?

A. I understand you want the same figures for the Pacific division that I have given for the western.

79 Q. The same for the Pacific division that you have given for the western division. Hopkins is a station nine miles from Minneapolis, is it not?

A. Yes, sir, about nine miles.

Q. And has how many inhabitants?

A. I don't know.

Q. Do you know the number of tons of freight which was hauled by your road to Hopkins during the fiscal year ending June 30, 1899?

A. I have a record of it.

Mr. CLARKE: Do you mean that stops there or that passes through? Everything that goes over our line goes through Hopkins. You mean local for Hopkins.

Mr. O'BRIEN: I meant destined for Hopkins.

Q. Hopkins is a very small place, is it not?

A. It is not a very large place.

Q. Well, is Minnetonka a large town?

A. The station is Tonka Bay. No, sir. Minnetonka Mills you probably refer to?

Q. Well, there is a station here marked "Minnetonka," that is all I know.

A. Well, that is it. It is a small place.

Mr. CLARKE: That is Minnetonka Mills.

WITNESS: It is just this side of the lake; a small place.

Q. Deephaven is simply a station on the lake?

A. Yes, sir.

Q. A small resort. Excelsior is a village on Minnetonka?

A. Yes, sir.

Q. About how many inhabitants?

A. I don't know; quite a little village.

Q. Well, can you give us the amount of freight which was destined for Excelsior, hauled by the road, during the year that you have been referring to?

A. Yes, sir.

Q. What I would like, Mr. Nay, is to have you testify as to
80 the amount of freight destined for those different stations, to show their relative importance.

A. I can furnish that information.

Q. Particularily as to the stations on the western division; Waconia, Young America, Norwood, Hamburg, Green Isle, Arlington, Gaylord, Gibbon, Fairfax, Franklin, and Morton.

A. You want the points on the western division, then?

Q. Yes. Now, without taking the time to ask you specifically, are you prepared to give the cost of the operation of the other divisions besides the western division, at this time, and the earnings of those different divisions?

A. Yes, sir. That is, not to give it here, but it is all worked up every month.

Mr. O'BRIEN: I shall want to ask Mr. Nay the same question with reference to all the divisions as well as the western division and show the amount of freight hauled on those different divisions to different points. I suppose he is not prepared to give that now.

Mr. CLARKE: No. We have not the slightest objection to giving

that information, so far as I know. If it can be done without too much trouble we are glad to give you any information we can, Mr. O'Brien. We will give you the information as to that.

The taking of testimony was at this point suspended, to be resumed at 10 a. m., August 23, 1899, at which time the following testimony was introduced:

FRANK NAY, recalled, testified as follows:

Examined by Mr. CLARKE:

Q. Mr. Nay, I will ask you if since yesterday's session you have made an estimate of the cost per ton per mile of handling freight on the Pacific division for the fiscal year ending June 30, 1899?

A. Yes, sir.

81 Q. What is it?

A. 3.184 cents.

Q. The Pacific division, you testified yesterday, is the extension from Morton to Watertown, South Dakota—from Morton, Minnesota?

A. Yes, sir.

Q. And is the next division lying west of what is known as the western division?

A. Yes, sir.

Q. On cross-examination yesterday you were questioned relative to the credits given the different divisions in making up the statement of earnings. Now, if I understand you rightly, if a car-load or a shipment originates on one division and passes over part of that division and part of another division, you credit each division over which it passes with earnings according to the mileage?

A. Yes, sir, we credit according to the exact mileage with one or two exceptions. The St. Paul division, being a very short division, only ten miles long, is allowed fifteen per cent. of the earnings, the same as the New Ulm is allowed thirty per cent.; but outside of that the division is on actual mileage basis.

Q. But, what I am getting at is this; if a shipment passes over a part of two divisions, each division is credited with its proportionate part of the earnings?

A. Yes, sir. If it passes over three divisions, each one of the three is.

Q. And if a shipment originates on one division, passes entirely over a second and reaches destination on a third, all three of them get their proportionate share of the earnings?

A. Yes, sir.

Q. Speaking of the St. Paul division, what is the cost per ton per mile for handling freight on the St. Paul division for the last fiscal year?

A. 5.840 cents.

82 Q. What is the St. Paul division?

A. From St. Paul to Minneapolis.

Q. You testified yesterday as to the gross earnings of the whole system, including lines within the State and lines without the State, including local business and interstate business. What percentage

or proportion of the earnings of the Minneapolis & St. Louis Railroad Company is earned upon local business? By that I mean business local to the State of Minnesota, originating and terminating within the State.

A. We have compiled no accurate statistics showing that, but I have made an investigation as best I could, and my judgment is that the local business is less than twenty-five per cent. of the entire business.

Q. Less than twenty-five per cent.?

A. Yes.

Q. Do you think that is a conservative and fair estimate?

A. That is a conservative and fair estimate. It might run lower. In one way it is superficial, but in another way it is fair, and I feel certain that it would run less than twenty-five per cent.

Q. How did you make that investigation?

A. I took the month of June, 1899, and took off the local tonnage between all stations within the State of Minnesota, and made an allowance for business to junction stations which is rebilled and goes outside of the State of Minnesota and also business from junction stations which comes from outside the State of Minnesota, and by that means found that the strictly Minnesota business would be less than twenty-five per cent. of the total.

Q. So that the estimate you made is from the actual business of the month of June, 1899?

A. Yes, sir.

Q. Well, now, what do you say as to that being an average business month—a fair month?

83 A. I think perhaps it is about as fair a month as we could take. I didn't give that as much thought, perhaps, as I should have before taking the month of June, but now I believe it is really a very fair month, because the grain business was quite heavy during the month of June for a summer month, and of course there is a great deal of grain in the State of Minnesota, and the merchandise business being about an average for the year, I think that it is a fair month to take.

Q. You made this from an examination of the actual shipments as shown by the waybills?

A. Actual shipments that were taken into our account, represented by what were reported as freight earnings for that month.

Q. And upon that you base your judgment that the business local to the State is not to exceed twenty-five per cent. of the whole business——

A. Not to exceed twenty-five per cent. of the total freight earnings.

Q. You are familiar with the method of handling freight over railroads—making shipments, the routine?

A. Yes, sir.

Q. I suppose every shipment has to be billed, does it not?

A. Yes, sir.

Q. Whether the shipment is large or small, or whether the haul is long or short, each shipment has to be billed?

A. Each shipment has to be waybilled.

Examined by Mr. O'BRIEN:

Q. Mr. Nay, can you give us the process by which you arrived at your conclusion with reference to the average cost per ton per mile on freight on the Western division?

A. Yes, sir. I took first the total operating expenses as shown by the books which are chargeable to the Western division——

84 Q. Amounting to how much?

A. Amounting to $219,266.13. Then I took the taxes on the gross earnings for that division, amounting to $19,120.82. Those taxes are arrived at by taking three per cent. of the gross earnings and adding the internal-revenue tax revenue stamps. I then took the interest on the bonded debt, taking such a proportion of the total interest on the bonded debt as the mileage of the Western division is a portion of the total mileage. That is, in taking that mileage I took the average miles operated during the year. The mileage changed. At the beginning of the year the miles operated was 509; the average mileage during the year being 416.54. I found what percentage the mileage of the Western division was of 416.54, and took such a portion of the total interest on bonded debt. That interest is $147,077.42. I then arrived at the proportion of the dividends paid on stock in the same manner as the interest on bonded debt, which gave $65,692.08, making a total of $451,156.45. From that total I deducted a portion of the interest and exchange, which is arrived at on the same basis that was used in connection with the interest on bonded debt and dividends on stock, amounting to $4,222.77, and a portion of the interest on investments, arrived at in the same manner, $5,787.39, making the total to deduct, $10,010.16, leaving a net cost of $441,146.29. The gross earnings for that division for that period was $603,554.72. The freight earnings were $475,771.83, or 78.83 per cent. of the gross earnings. I then took 78.83 per cent. of the net cost mentioned above as chargeable to freight business, which gave $347,755.62. The total tons one mile for that period were 26,901,460, and by dividing that into the

85 proportion of cost of operation chargeable to freight gives 1.293 cents per ton per mile.

Q. That is for the Western division?

A. For the Western division.

Q. What was the highest rate per ton per mile which was charged during that period upon any freight hauled on that division?

A. Our records are not kept in such a manner as to show that. The general freight agent's records would show that rate.

Q. Well, as a matter of fact, different classes of merchandise or of freight pay different rates, do they not?

A. Per ton per mile, yes, sir.

Q. And some of the rates are very much higher than the average rate that you have given here?

A. Than the average cost.

Q. Than the average cost?

A. I presume so.

Q. In fixing a tariff, what considerations are taken into account?

A. Well, I could not answer that, as we do not fix the tariffs, the general freight department makes the tariffs.

Q. And you know nothing about that?

A. I don't know what basis they use.

Q. Are you able to state the number of tons of hard coal in carload lots which were hauled on the Western division of the Minneapolis & St. Louis road during the year ending June 30, 1899?

Mr. CLARKE: We will prove that by the general freight agent.

Q. Will you please state again what the gross earnings for freight were on the Western division?

A. $475,771.83.

Q. And just give me the total cost again.

A. Do you mean the total cost or the proportion chargeable to freight?

86 Q. I mean the proportion chargeable to freight.

A. $347,755.62.

Q. And in that is included the amount paid as dividends upon stock?

A. Yes, sir.

Mr. CLARKE: I will say there that no dividends have ever been paid on common stock. That is correct, isn't it, Mr. Nay?

WITNESS: Yes, sir.

Q. Now, will you please give the same information with regard to the other divisions?

A. Do you mean the average cost per ton per mile?

Q. Yes, and give the process in each case.

A. They are all arrived at on the same basis, with two exceptions.

Q. Well, you might give the ones that are arrived at on the same basis, first, give the results, and then you can give the exceptions. Maybe I can get what I want easier this way; take the Pacific division.

A. The Pacific division is one of the exceptions.

Q. Well, leaving Minneapolis and going south, how is that line divided?

A. The first division is from St. Paul to Minneapolis.

Q. That is not one of the exceptions?

A. No, that is not one of the exceptions. That is arrived at on the same basis. The cost per ton per mile on that division for the year ending June 30, 1899, was 5.840 cents. The next division is known as the Albert Lea division.

Q. Well, now, let me ask you, before you go any further; there is practically no local freight on that first division, is there?

A. No, sir.

Q. You mean there is none?

A. Practically no local freight on that division.

87 Q. So that its effect on the general question is infinitesimal; the rate per ton per mile on that division really cuts no figure?

Mr. CLARKE: Well, that is a matter for the court, perhaps, and not for Mr. Nay.

Q. Well, is there any local freight on that division?

A. I think there is none. I would not be positive as to that.

Q. How did you arrive at the cost per ton per mile?

A. If there is any local freight it is between St. Paul and Minneapolis; there is no local freight at any intermediate point.

Q. I know, but if there is no local freight, how did you arrive at the cost per ton per mile—what it would be if there had been any freight?

A. No, on freight hauled through.

Q. From St. Paul to Minneapolis?

A. From St. Paul to Minneapolis, passing, say, from St. Paul to Hopkins and to these various stations out on the line; the St. Paul division gets its proportion of the earnings on those shipments, and of course it is charged with its proportion of the expenses.

Q. Well were there any number of tons of freight on that division which could be considered local to that division? That is, freight simply from St. Paul to Minneapolis, or *vice versa?*

A. I couldn't answer that without further investigation of our books.

Q. The records you have here show nothing?

A. This record here simply shows the total freight earnings; and, as I said before, the total freight passed over the St. Paul division between St. Paul and Minneapolis, whether the destination was St. Paul or Minneapolis or beyond either or both of these points—all business is included that passes over the rails.

88 Q. Now, the conditions surrounding the haul from St. Paul to Minneapolis are such that it would necessarily be more expensive to operate trains than it would be in other portions of the road?

A. Yes.

Q. And the expense of maintaining that division is largely in excess of maintaining any similar distance in other portions of the road?

A. Yes.

Q. The terminals are included in that division, are they not—the terminals at this point?

A. The terminals at St. Paul and a portion of the terminals at Minneapolis.

Q. Well, now, the next division in your line is what?

A. Is what is known as the Albert Lea division, extending from Minneapolis to Albert Lea, both in Minnesota.

Q. And what is the distance?

A. It is about 108 miles. The average cost per ton per mile on that division is .704 of a cent per ton per mile.

Q. What was the gross tonnage on that division during that year?

A. 89,524,755 tons per mile.

Q. That is for one mile?

A. For one mile.

Q. For a haul of one mile?
A. Haul of one mile.
Q. And what were the total freight earnings?
A. $906,939.68.
Q. And what was the proportion of the cost of operating that division, chargeable to freight earnings?
A. $631,040.61.
Q. Now the next division?
A. The next division is what is known as the Southern division, extending from Albert Lea, in Minnesota, to Angus, Iowa. The cost per ton per mile on that division, for the year ended June 30, 1899, was 1.425 cents.
Q. What was the total tonnage for one mile?
A. 34,797,490 tons per mile.
89 Q. And the total freight earnings?
A. $376,755.98.
Q. And the total cost properly chargeable to freight?
A. $496,114.60.
Q. In all of those computations you have figured upon the same basis as you stated you did with regard to the Western division?
A. Yes, sir.
Q. Now the branch from Winthrop to New Ulm, formerly the Minneapolis, New Ulm & Southwestern railroad?
A. Well, my figures for that comprise the entire year. For eight months it was operated separately and for four months as a part of the Minneapolis & St. Louis. The cost per ton per mile on that branch was 3.962 cents. This is one of the exceptions. In arriving at the cost, I have not included any dividends, because the greater portion of the year it was operated separately and there was a deficit, and I did not think it proper to charge any portion of the dividends to that division.
Q. Is that a division, or what do you call it?
A. A division, yes, sir; the Southwestern division.
Q. Now, what was the total tonnage on the Southwestern division?
A. 675,831 tons one mile.
Q. And the total cost?
A. Chargeable to freight, $26,779.78.
Q. And the total freight earnings?
A. $21,715.19.
Q. Now, the Pacific division.
A. The Pacific division, the average cost per ton per mile for the year ended June 30, 1899, was 3.184 cents. And this is another of the exceptions. This division was operated separately from July 1, 1898, to February 19, 1899, at which time it passed into the possession of the Minneapolis & St. Louis, and from that time it
90 was operated as the Pacific division. Now, in arriving at the total cost for that division, I have included only $38,148.55 as dividends on stock, which is what I have considered its proportion since it passed into the hands of the Minneapolis & St. Louis. On a mileage basis the dividends for the whole year, if the same

rate had been paid, would amount to $150,000 or $160,000, but I have included only $38,148.55.

Q. Well, have any other matters been taken into consideration—any other difference considered?

A. No other difference. The only exceptions are the Southwestern and Pacific——

Q. I know, but in the Pacific division have there been any other changes made in the manner of computations or method?

A. No, sir.

Q. Do your estimates for that division cover the entire year, or only since the period it passed into the hands of the Minneapolis & St. Louis?

A. No, they cover the entire year.

Q. Had you access to the books and earnings of the company for the time before it passed into the hands of the Minneapolis & St. Louis?

A. Yes, sir, they were kept in my office.

Q. Well, now, what was the total tonnage on that division during that year?

A. 9,414,681 tons per mile.

Q. And what was the total cost chargeable to freight?

A. $299,728.83.

Q. And the total freight earnings?

A. $203,006.92.

Q. Prior to the time that the Pacific division became a part of the Minneapolis & St. Louis was that road operated independently?

A. Yes, sir.

91 Q. And had an independent set of officers?

A. Yes, sir.

Q. And independent equipment?

A. Yes, sir, a small amount of equipment.

Q. So that the cost of operating that piece of road has largely decreased since it has become a part of the Minneapolis & St. Louis system; there are some salaries that are no longer paid, and matters of that sort?

A. Yes, but to offset that a portion of the salaries of officers of the Minneapolis & St. Louis are paid by it.

Q. In other words, the cost per ton per mile for freight hauled upon that road now would be less than it must have been during the time that the system was independent of the Minneapolis & St. Louis system—before the Minneapolis & St. Louis had acquired that piece of road?

Mr. CLARKE: Don't state any conclusion, Mr. Nay; state what you know.

A. Well, I don't know.

Q. You don't know about that. So you are not able to say that an estimate of the cost of hauling freight upon the Pacific division based upon the expenses of that division prior to the time it became the property of the Minneapolis & St. Louis road is a correct basis as to what the present cost is?

A. I don't know as I quite understand that question.

Q. You are unable to say whether or not the operating expenses of what is now known as the Pacific division of the Minneapolis & St. Louis road have been lessened because of its having come under the direct jurisdiction and ownership of the Minneapolis & St. Louis road?

A. No.

92 Q. And the figures that you have given as to the cost of hauling freight upon that division are based upon the operating expenses as they were before that piece of road was owned by the Minneapolis & St. Louis road?

A. No, sir.

Q. Well, haven't you taken into consideration the operating expenses for the year ending June 30, 1899?

A. Yes, sir.

Q. And how long during that year was this piece of road owned by the Minneapolis & St. Louis?

A. It was owned from February 20 to June 30.

Q. And prior to that time it had been operated as an independent road?

A. Yes, sir.

Q. Now, as to whether the cost of hauling freight on that road was lessened or not by the consolidation, you don't know?

A. No.

Q. Therefore you are not able to state that your estimate of the cost of handling freight upon that road is correct as at the present time?

A. Yes, I am. The——

Q. Well, if you can't tell whether it has cost more or less to operate that road now, how do you know?

A. I can't tell offhand, without examining the records, as to that point.

Q. Well, that is all I want to know; you don't know about that?

A. No.

Q. You have based your calculation upon a condition of things that existed last year, but does not exist now?

A. No, that is not true.

Q. You don't know whether the cost of operating what is now known as the Pacific division of the Minneapolis & St. Louis road has been decreased or not by reason of the change in management of that road which took place last February, do you?

A. No, sir.

93 Q. In giving the cost of carrying freight per ton per mile on that road, you have estimated that cost according to the expense of operating what is now known as the Pacific division during the year ending June 30, 1899?

A. Yes, sir.

Q. During all of that year prior to February, 1899, the Pacific division was operated as an independent system?

A. Yes, sir.

Q. If, as a matter of fact, the cost of operating that system has

been decreased by reason of the change in management which you have testified to, your estimate is not correct as to the present cost of operating that division, is it?

A. If it has decreased, of course the cost during the time that it has been under the present management would be less than before; but I don't know whether it has decreased or not.

Q. You don't know that it has decreased?

A. No.

Q. You don't know that it has not?

A. No.

Q. Therefore, you are not prepared to say at this time that this estimate of yours is a fair estimate as to the present cost per ton per mile of hauling freight upon that division?

A. I can only give it for what it is worth; it is for the year ended June 30, 1899—the actual cost for that year.

Q. Can you give us the average cost per ton per mile for carrying freight on the Minneapolis & St. Louis system?

A. On the entire system?

Q. On the entire system.

A. Yes, sir. It is 1.112 cents for the year ended June 30, 1899.

Q. How do you get at that?

A. I arrived at that by taking the total operating expenses, taxes, interest on bonded debt, dividends on stock, amounts paid for
94 trackage and other rentals, aggregating $2,532,522.60, and deducted therefrom receipts from interest and exchange, interest on investments, and trackage and other rentals received, amounting to $196,596.95, leaving a total net cost of $2,335,925.65. I found that the freight earnings were 74.41 per cent. of the gross earnings, and I took 74.41 per cent. of the net cost, which made $1,738,162.28, as chargeable to freight, and by dividing that by the total tons one mile ($156,379,613) gives 1.112 cents.

Q. You said yesterday that the entire Minneapolis & St. Louis system cost how much?

A. $23,390,560.15.

Q. Now, will you please tell us what items go to make up that cost?

A. Well, it is what was originally paid for the road and equipment of our present company.

Q. Do you mean at the time of the foreclosure?

A. At the time of the reorganization. Of course, as I say, I find this on the books. I know that it is the original cost, together with any additional items—there have been additional items of equipment purchased since, but those additional items are small.

Q. Well, can you give the history of the foreclosure proceedings and reorganization of that road which took place a short time ago?

A. No, sir.

Q. All that you know as to the cost of the road, then, is what appears from the books?

A. Yes, sir.

Q. Well, now, what appears there as the original cost? That

amount is not there as the original cost; you say there are some additions?

A. There have been some additions.

Q. Well, give us the original cost.

A. I haven't it separated here. The additions are comparatively small.

95 Q. In regard to this tonnage that you speak of, you couldn't tell us the different kinds of freight, the different classes of freight that were hauled? You haven't that classified?

A. Not for each division; no, sir.

Examined by Mr. CLARKE:

Q. Now, this cost you speak of was the amount which the books show as the cost of the property at the time of the reorganization of the present company?

A. Yes, sir; I presume so. As I stated, it is what appears on the books now; I haven't investigated further than that.

Q. The Minneapolis & St. Louis Railroad Company's property?

A. Yes, sir.

Q. Do you know the date of the incorporation of the present company?

A. Yes, sir. It was November 1, 1894.

Q. November 2, 1894.

A. Second? The first was Sunday, I suppose.

Q. Yes, November 2, 1894 Now, these other items that you speak of are items of property which have been purchased since that time, as shown by your books?

A. Yes, sir.

Q. You say the average cost per ton per mile for carriage of property over the lines of the Minneapolis & St. Louis Railroad Company, including the whole system, is 1.112 cents? Now, does that include all business, both through and local?

A. Yes, sir.

Q. And all business in traffic, both interstate and local?

A. Yes, sir; it covers every kind of business that was handled.

Q. And in making that computation you have included the cost of all kinds of traffic on all the divisions, both through busi-

96 ness and business local to the State of Minnesota, and every class and kind of freight?

A. Yes, sir.

Q. And the average cost of transportation for all that, you say, is 1.112 cents per ton per mile?

A. Yes, sir.

Q. Now, you say that the expense of transporting local traffic is greater than that of through traffic, in proportion?

A. Yes, sir.

Q. Does every shipment have to be billed?

A. Has to be waybilled, yes, sir.

Q. Is the haul as long on shipments local to the State as on interstate shipments?

A. No, sir.

Q. Are there as many full car-loads or more broken lots?

A. There are more broken lots on local business.

Q. What average revenue per ton per mile would you be afforded to the Minneapolis & St. Louis Railroad Company for the transportation of merchandise between St. Paul or Minneapolis and the points named in Schedule B, under the commissioner's tariff?

Mr. MILLS: We only make it on one article—hard coal; you say "merchandise."

Q. Well, the average cost per ton per mile, what revenue would there be at that rate?

A. That is under Schedule B?

Q. Yes; the commission's rates?

A. That is to all these stations?

Q. Yes.

A. It would be 1.118 cents.

Q. And that is hard-coal rate, one of the lowest-priced commodities carried, isn't it, covered by that schedule?

A. Yes, sir.

97 Q. And still even, if we were to include high-priced commodities, include everything—that rate would only yield a revenue of 1.118 cents per ton per mile?

A. Yes.

Q. A merchandise rate of a tariff identical with the one fixed by Schedule B for the carriage of hard coal, I understand, then, would yield a revenue to the Minneapolis & St. Louis Railroad Company of 1.118 cents per ton per mile; is that correct?

A. Only between those stations.

Q. Yes; the average, between those stations?

A. Between those stations.

Q. How much more is that per ton per mile than the average cost of transportation of merchandise over the whole line, including interstate and local business?

A. .006 of a cent.

Q. Now, Mr. Nay, I understand that in making up your estimate of the cost per ton per mile for the operation of the Southwestern division, that division has been given credit for the arbitrary of thirty per cent. on all merchandise passing over it, has it not?

A. Yes, sir.

Q. How much more credit does the Southwestern division receive under the division which you have adopted than it would earn on a mileage pro rate, approximately?

A. I should say at least fifty per cent. more.

Q. So that is the estimate you have made, the Southwestern division gets a credit of fifty per cent. more than the actual earnings on a mileage pro rate?

A. Yes, sir.

Q. And you say you have charged it with no dividend?

A. No, sir.

Q. On the other divisions you have included the dividends?

A. Yes, sir.

Q. Now, on what stock has dividends been paid?

A. On the first preferred and second preferred.

98 Q. The first preferred stock has been retired, has it not?

A. It was retired June 1st.

Q. And you have not included it in your capitalizations?

A. No, sir.

Q. Your statement that there was $10,000,000 of stock outstanding does not include the first preferred?

A. Does not include the first preferred.

Q. What was the amount of the first preferred?

A. $2,500,000.

Q. What dividends were paid on the second preferred?

A. There has been $180,000 paid on the second preferred.

Q. What percentage?

A. That would be four and one-half per cent.

Q. Four and one-half?

A. Yes, sir; two per cent. the first dividend and two and a half the second.

Q. Has any dividend ever been paid on common stock?

A. No, sir.

Q. Then the dividends you have charged up cover only the preferred stock?

A. Only the preferred stocks.

Q. None on common?

A. None.

Mr. O'BRIEN: How was the first preferred stock retired?

The WITNESS: By the issue of the same amount of bonds; $2,500,000 worth of bonds.

Mr. O'BRIEN: And what is the amount of the second preferred stock?

A. $4,000,000.

Mr. O'BRIEN: And $6,000,000 common?

The WITNESS: $6,000,000 common?

Mr. MILLS: Mr. Nay, you don't know anything about the tonnage of hard coal carried to the several stations that are mentioned in the order?

99 The WITNESS: I have no figures with me; I understand Mr. Hopkins has them.

W. M. HOPKINS, having been sworn, testified as follows:

Examined by Mr. CLARKE:

Q. You are the general freight agent of the Minneapolis & St. Louis Railroad Company, are you, Mr. Hopkins?

A. Yes, sir.

Q. How long have you been connected with the traffic department of the railroad?

A. About fifteen years.

Q. How long have you been general freight agent of the Minneapolis & St. Louis Railroad Company and its predecessor, the Minneapolis & St. Louis Railway Company?

A. About ten years.

Q. During all that time you have had to do with traffic and particularly upon the line and lines of this company, have you?

A. Yes, sir.

Q. You are familiar with the location of the road and the nature and character of the business and the location of the different stations, and, in a general way, with the service rendered in transporting traffic over the line of this company?

A. Yes, sir.

Q. How much hard coal was transported from Minneapolis to the points named in Schedule B, on the Western, Pacific and Southwestern divisions, during the year ending June 30, 1898?

A. Beginning at Norwood, 34 tons; Hamburg, none; Green Isle, none; Arlington, 74½; Gaylord, 30; Winthrop, 143; Lafayette, 39; Klossner, blank; New Ulm, 526½; Gibbon, 115; Fairfax, 340; Franklin, 160; Morton, 270; Redwood, 143; Delhi, blank; Belview, 44½; Echo, 195; Wood Lake, 42½; Hanley Falls, blank; Hazel Run, 75; Clarkfield, 169; Boyd, 12; total, 2,403 tons.

100 Q. Which of these stations are upon the Southwestern divisio n, formerly known as the Minneapolis, New Ulm & Southwestern railroad?

A. The stations of Klossner, Lafayette and New Ulm.

Q. What is the first station going west on the Pacific division?

A. Morton.

Q. The stations following Morton are west of Morton, in the list you have given?

A. Yes, sir.

Q. And would be on the Pacific division?

A. Yes, sir.

Q. What is the first station west of Winthrop, on the Western division?

A. Gibbon.

Q. And all stations between Gibbon and Morton are on the Western division?

A. Yes, sir.

Q. What is the total tonnage given by that list which you have, for that year?

A. The total of the figures which I have given?

Q. Yes.

A. I have not figured it up.

Q. Well, how many tons and about how many car-loads would that be?

A. Approximately 134 car-loads. (Having footed up the list.) I use the basis of 18 tons per car-load. If the average car-load would be heavier than that, the number of car-loads would be less.

Q. What do you suppose is the average number of tons to the car?

A. I can only state approximately. From 15 to 18 tons. That would vary according to the line transporting it, the size of the equipment used, and the points between which the coal was transported.

On through business the average per car would be less than on business between points like Duluth and St. Paul, for instance.

101 Q. And that would make, all together, about how many car-loads of coal?

A. I should say approximately 134 car loads.

Q. During the whole year?

A. Yes, sir. I have used an estimate of 18 tons per car-load, which I think is quite high.

Q. Now, how are shipments of that kind made, in car-loads or train-loads or part car-loads, or how?

A. They are made in car-loads and train-loads, too, if we can get sufficient to transport.

Q. Well, I mean how are they in fact made to these points on our line?

A. Oh, in car-loads; single car-loads.

Q. No trains?

A. No, sir.

Q. Single cars, taken from what point? Minneapolis?

A. We receive them either at Minneapolis or Minnesota transfer.

Q. Minnesota transfer is between St. Paul and Minneapolis, is it?

A. Yes, sir.

Q. It is the point where cars are transferred between the different railway companies?

A. Yes, sir.

Q. A car of coal from Duluth, destined to any one of these points on the Southwestern division, being the Minneapolis, New Ulm & Southwestern, how is it handled, and how and where is it transferred?

A. We would receive it from the connecting lines at St. Paul, Minnesota transfer, or Minneapolis, and transport it over the St. Paul division, the main-line division, the Western division to Winthrop, then over the Southwestern division from Winthrop to New Ulm.

Q. About how many times would the car be transferred or switched and where?

A. It would have to be taken out of the train and put into another train at least three times; possibly four.

102 Q. At what points?

A. At Minneapolis, at Hopkins and at Winthrop.

Q. Is Winthrop a junction point?

A. It is a junction point between the Southwestern and Western divisions.

Q. How is the freight handled between Winthrop and New Ulm? Does it go out on the same train it leaves Minneapolis in, or is it transferred and put in another train?

A. It is transferred into another train.

Q. So that it has to be switched and put into another train at Winthrop?

A. Yes, sir.

Q. How about Hopkins?

A. The same is true of Hopkins.

Q. Hopkins is the junction point of the main line and the Western division, is it?

A. Yes, sir.

Q. So it has to be switched and handled once in the yard at Minneapolis, once at Hopkins and once at Winthrop?

A. Yes, and another time at the point of transfer from the connecting line—Minnesota transfer or St. Paul, as the case might be. So there would be at least three transfers from one train to another, and possibly four.

Q. Three transfers if delivered to the Minneapolis & St. Louis at the Minneapolis yards, and four transfers if delivered either at St. Paul or Minnesota transfer?

A. Yes, sir.

Q. What is a fair switching charge—I don't mean, now to ask you as to charge made by a transfer company which is organized specially for the purpose of transferring the cars of other companies, but a fair allowance to be made, in making a rate or tariff, for transfers like these, at the junctional points; a fair charge per car?

103 A. So far as our company is concerned, our switching charges have been fixed—I am speaking now of switching charges on the line locally, not switching charges in the cities covering the transfer of grain between elevators and mills, where they handle large quantities of it, but switching charges fixed at local stations on the line, have been fixed with a view of covering the cost of the service and not particularly with a view of deriving any revenue from that service; that is, they have been merely a nominal charge to cover the cost of the service; two dollars per car-load.

Q. This transfer of cars and switching at junctional points is an entirely additional service and expense from that rendered when a car is carried forward in a train?

A. Yes, sir. That, of course, would not cover the entire cost of transferring a car from one train to another.

Q. You think about 134 car-loads, then, would cover the whole business done in that year, figuring the cars at 18 tons per car?

A. Yes, sir, if you use that method for estimating car-loads.

Q. Now, are these cars billed separately?

A. Yes, sir.

Q. What is the longest haul between Minneapolis and New Ulm?

A. Do you mean by our line?

Q. Yes.

A. We only have one haul; that would be by the way of Winthrop. Oh, do you mean the distance?

Q. I mean the distance.

A. 88 miles.

Q. How many stations between Minneapolis and New Ulm to which we carried hard coal that year, as shown by that paper that you have there?

A. Six.

Q. Six within the distance of 88 miles?

A. If you include New Ulm it would be seven.

104 Q. But six between New Ulm and Minneapolis?

A. Yes, sir.

Q. What is the distance to Morton from Minneapolis?

A. 101 miles.

Q. How many stations between Minneapolis and Morton to which we carried hard coal that year?

A. Seven.

Q. Seven stations; not including Morton?

A. Yes, sir.

Q. What is the actual distance from Duluth to Minneapolis by the St. Paul & Duluth road?

A. 156 miles as shown by the chart or map used by the commission in this case, marked Exhibit A.

Q. Which expense is the greater in conducting transportation? The expense of local traffic, traffic local to the State and to local points, or through traffic?

A. Local traffic.

Q. Wherein is the difference?

A. The cost of service in rehandling, receiving, storing, and discharging goods, additional help required, fuel used, wear and tear of equipment and track in switching cars in and out of trains, the small tonnage per car as compared with the tonnage of through trains and through traffic, and the small number of cars per train as compared with through trains. One more item (it is a considerable one also) is the fact that your local trains must be run per schedule every day, but your through train need not be run unless you have traffic sufficient to warrant the running of the train. Very often if you have a limited number of through cars, insufficient to make up a train, you may abandon the through train, letting the freight rest on the side track until a later hour, or the following day,

105 until sufficient cars are accumulated to run a full through train over that division. The local service cannot be handled in that way. You have a certain schedule on which to run your local train every day, and you must run that whether it contains two cars or a full train of twenty or whatever your maximum train capacity is, so that your fixed charge is always present on your local train, regardless of the tonnage, while it may be avoided on your through train.

Q. In other words, you have got to run the local train anyway, whether there is any business for it or not?

A. Yes, sir.

Q. And whether the business is much or little?

A. Yes, sir.

Q. And you have got to stop at every local station and take traffic if there is any?

A. Yes, sir.

Q. Speaking from your own actual knowledge and experience as traffic manager of the Minneapolis & St. Louis Railroad Company, do these local shipments (I mean by that, shipments local in the State) usually consist of car-loads, or are they smaller, and about how

do they run? Just explain the average nature and character of shipments local in the State.

A. Traffic as a whole?

Q. Yes.

A. Oh, there are very many more less *than* a car-load shipments than there are car-lot shipments; a great many times over.

Q. Do the cars in which you handle the local traffic—does each car carry business destined for one station or for distribution to many stations?

A. As a rule, for distribution to many stations. One of the largest items of cost in transporting local traffic is the impossibility of loading cars to anywhere near their maximum capacity. For instance,

106 5,000 pounds is a good big average load for a local car—what we term a peddler, while on your through business 30,000 to 40,000 pounds, perhaps, would be an average.

Q. 5,000 pounds is a fair average, you say, for a car in the local freight traffic?

A. Yes, sir. If you can average 5,000 pounds on your local service you are doing well.

Q. Now, suppose a car engaged in local business contains shipments to several different points, the same car—is that a common occurrence?

A. Yes, sir.

Q. Does each one of these shipments have to be separately billed?

A. Yes, sir.

Q. So that no matter how many shipments one car carried, there would be a separate waybill for each shipment?

A. Yes, sir, and a stop has to be made at each one of the stations that an item of freight is billed to, no matter whether the revenue in that item amounted to fifty cents or a dollar; you must stop your car at the platform, take out your box or whatever the local item is, in contradistinction to your through train, where, if you have no freight for that station, you don't stop your train there; it goes through.

Q. Is there any difference in making the billing for one box of shoes, on which you might get 25 cents, and of a car-load of wheat or coal, on which you might get as many dollars or more?

A. No, sir, it would cost as much to run that car through to the ultimate point of destination, with that one box of shoes in, on which you might earn 75 cents—practically cost as much to transport that case of shoes as it would to transport a car-load of wheat for the same distance, on which we might earn sixty or seventy dollars.

Q. What in your opinion would be a fair relation to estab-

107 lish as to the cost of transportation of local traffic and that of through traffic?

A. Well, that is a pretty hard question to answer, Mr. Clarke.

Q. Well, give us your best judgment and opinion. Make it conservative.

A. It would depend on circumstances. Handling a large volume of through business and a small comparative amount of local business, the cost, of course, would be less in proportion. If your earn-

ings consist very largely of revenue from your local traffic and the volume of through business is small, of course the proportion would be reversed.

Q. Well, take the Minneapolis & St. Louis Railroad Company, your own company, and your own acquaintance with its business; how much more, if any, in proportion, in your judgment, would the cost of transporting a given tonnage and peddling it out at local stations or on local trains be, than the cost of transportation of through business, giving us your own judgment upon the facts as you know them to be from your ten years' experience as traffic manager of this road?

A. Do you mean to take the line as a whole, or this particular division?

Q. Yes, the line as a whole; the difference in cost of transporting through business and local business. I mean, would it be a quarter more, or a half more, or twice as much; any proportion which in your judgment you think is fair, speaking from your own knowledge of the way local business and through business is handled and the necessities of the case?

A. I should say it would probably cost 125 or 130 per cent. more to handle local business than it does to handle through business on our road.

Q. 125 or 130 per cent.?

A. Yes, sir. It would be more than that, I believe.

108 Q. You mean per ton?

A. Yes, sir.

Q. An average car-load of through business would contain, you say, from 15 to 18 or 20 ton-?

A. I should say perhaps 18 tons would be a fair average for the through business.

Q. And a car-load of local business might be five ton-?

A. 5,000 pounds, on purely local business, is a good average, sir.

Q. 5,000 pounds?

A. 5,000 pounds, yes. I don't think we average that; I wish we did.

Q. You heard the testimony of the auditor, in which he stated that the average cost per ton per mile for transporting all business over the line of the Minneapolis & St. Louis Railroad Company, including both through business and local business, was 1.112 cents, did you?

A. Yes, sir.

Q. Would that cover the expense of transportation of traffic local to the State of Minnesota?

A. No, sir.

Q. What is the average number of cars in a local freight train on the Western and Pacific divisions?

A. That is pretty hard to answer. It varies at different times in the year. I have seen trains leave Minneapolis for the Western and Pacific divisions with six cars of merchandise, and I have seen them go out with twenty. I should say that the average would not ex-

ceed ten or twelve car-loads. That is merely a guess, however. I think our train records probably would show that more particularly.

Recess until 2 p. m.

IRA B. MILLS, having been sworn, testified as follows:

Examined by Mr. CLARKE:

109 Q. You are the chairman of the board of railroad and warehouse commissioners of this State?

A. Yes, sir.

Q. And were such at the time the order which includes Schedule B was made?

A. Yes, sir.

Q. In making that order, what mileage did you adopt as the distance from Duluth to Minneapolis?

A. I think the basis upon which we figured was 156.80 miles.

Q. In that case you held the rate of $1.25 of the St. Paul & Duluth from Duluth to Minneapolis to be a reasonable rate, did you not?

A. Well, we figured on that basis as a rate that they had established. I don't think we had under consideration whether that was a reasonable rate for that haul, or not.

Q. Well, you took that rate as——

A. As a basis, yes, sir.

Q. You took the $1.25 local rate in force by the St. Paul & Duluth from Duluth to Minneapolis, as a basis on which you made Schedule B?

A. Yes, sir.

Q. And that rate was $1.25 per ton, wasn't it, on hard coal?

A. $1.25 per ton, if I recollect right now.

Q. And the mileage that you figured, which we will assume to be 156 miles—I think it was figured out that it was eight-tenths of a cent per ton per mile.

A. I don't recollect now what it did figure out. If that is the figure, that is correct.

Q. In making the joint rate in Schedule B, you extended the rate from Minneapolis to local points upon the line of the Minneapolis & St. Louis and the Minneapolis, New Ulm & Southwestern, at the same rate per ton per mile at which it would figure at $1.25 from Duluth to Minneapolis, whatever the mileage was, did you not?

A. I am not sure, Mr. Clarke, whether it was figured on
110 that basis or not—whether it was extended that way. The figures will show whether it was or not.

It is agreed that the distance from Duluth to St. Paul is 152 miles, and from Duluth to Minneapolis, at the point of delivery, is 162 miles, on the St. Paul & Duluth railroad.

Mr. ARMSTRONG: Mr. Mills, figuring your mileage at 88 miles to New Ulm, and our mileage to Minneapolis at 156¼ miles, it would give you $1.95, which is the exact rate.

Mr. CLARKE: Well, that is the rate that the commission fixed.

Mr. ARMSTRONG: So that you evidently based it on 156¼ miles of

ours and 88 miles of yours, which would make exactly eight-tenths of a cent a mile.

Q. Now, at eight-tenths of a cent a mile for 88 miles to New Ulm, what would that make the proportion of the Minneapolis & St. Louis, adopting the figures that your secretary, Judge Mills, compiled in making that map or tracing that you had showing the rates and distances?

A. My impression is that we used as a basis 156 and 89.

W. M. HOPKINS, recalled, testified as follows:

Q. I will ask you first whether the coal rate from Duluth to St. Paul and Minneapolis is the same?

A. I understand it to be, yes, sir.

Q. Now, assuming the distance from Duluth to Minneapolis to be 156 miles and the mileage figured at eight mills per ton per mile, have you carried out that same rate per ton per mile to the different stations named in Schedule B?

A. Yes, sir.

Q. I will ask you now whether an extension of the rate of
111 eight mills per ton per mile from Minneapolis to the various points named in Schedule B gives the rate fixed by the commission?

A. Yes, sir.

Q. What is the rate on hard coal in car-load lots from Duluth to Fergus Falls, Minnesota?

A. $2.45 per ton. That rate is taken from the tariff of the Northern Pacific Company, on file in our office, and I assume that that is correct.

Q. That is the tariff now in force?

A. I understand it to be, yes, sir.

Q. Do you know the rate per ton per mile on that, have you figured that out?

A. Yes, sir.

Q. How much is it?

A. 1.129 cents.

Q. Now, what is the distance from Duluth to Fergus Falls by the shortest route?

A. 217 miles by the Northern Pacific railroad.

Q. What is the rate on hard coal in car-load lots from Duluth to Breckenridge?

A. $2.75 per ton.

Q. How much per ton per mile?

A. 1.136 cents per ton.

Q. What is the distance from Duluth to Breckenridge by the shortest route?

A. 242 miles by the Northern Pacific railroad.

Q. What is the rate on hard coal in car-load lots from Duluth to Appleton?

A. $2.50 per ton.

Q. What is the rate per ton per mile?

A. A cent per ton per mile.
Q. The distance is what?
A. 250 miles.
Q. And what is the rate on hard coal in car-load lots from Duluth to Cottonwood?
A. $2.50 per ton.
Q. What is the distance?
A. 248 miles; figuring a cent and eight-thousandths of a cent per ton per mile.
Q. And what is the rate to Morris, Minnesota, in car-load lots from Duluth?
A. $2.40 per ton.
112 Q. What is the distance?
A. 227 miles by the Northern Pacific railway.
Q. Is that the short line?
A. That is the short line, yes, sir.
Q. What is that per ton per mile?
A. 1.057 cents.
Q. Do you get these rates from the published tariffs?
A. Yes, sir.
Q. What was the rate from Duluth to New Ulm, Minnesota, on hard coal in car-load lots before the through tariff was canceled?
A. $2.50 per ton.
Q. How much would that be per ton per mile?
A. A cent per ton per mile, approximately. It would not figure quite that. If you used the distance the commissioners figured on, 244 miles, it would figure a trifle more than that. We figured the distance from Duluth to New Ulm in round numbers 250 miles. Using the basis the commissioners figured on it would be 244 miles.
Q. The rate then would be a little more than that?
A. Slightly, yes, sir.
Q. What is the rate to Winthrop, Minnesota?
A. $2.50 per ton.
Q. How far west did the $2.50 rate extend?
A. As far as Madison, Minnesota.
Q. And what is the distance from Duluth to Madison?
A. 331 miles.
Q. What made the rate of $2.50 a ton from Duluth to Madison, the distance being 331 miles?
A. Because the rate on the Great Northern railway at Appleton, a point opposite Madison, was $2.50 per ton.
Q. And it was made to meet that rate?
A. Yes, sir.
Q. How far west on our line did the reduction in rates on hard coal in car lots from Duluth, ordered by the commission, extend?
A. To Boyd, Minnesota.
113 Q. What was the average deduction per ton?
A. 53 cents per ton.
Q. What is the rate on hard coal in car-load lots from Duluth to Brownton, Stewart and points located on the Chicago, Milwaukee & St. Paul railroad opposite our stations of Winthrop and Gibbon?

A. $2.50 per ton.

Q. What is the rate at Bird Island and points on the Chicago, Milwaukee & St. Paul opposite Morton on our line?

A. $2.50 per ton.

Q. What is the rate at Renville and points on the Chicago, Milwaukee & St. Paul opposite Delhi or Echo?

A. $2.50 per ton.

Q. And at Montevideo, a point on the Milwaukee road opposite Clarkfield?

A. $2.50 per ton.

Q. Have the rates on hard coal from Duluth to the points which I have just mentioned to you on the Chicago, Milwaukee & St. Paul railroad, and along that division, been reduced to correspond with the reductions ordered by the commission to be made in the rates from Duluth to the opposite points on our line?

A. No, sir, so far as any published tariffs that we can find indicate.

Q. So that if the order of the commission be complied with, we would be compelled to carry hard coal from Duluth at an average rate of 53 cents per ton to points on our line from Norwood to Boyd less than is permitted by existing tariffs at opposite points on a competing railway?

A. Yes, sir.

Q. Do you know whether any complaint has ever been made to the Minneapolis & St. Louis Railroad Company as to the rates on hard coal in car-load lots from Duluth, formerly in effect from Hopkins to Madison?

A. No, sir, no complaint was ever made to us.

114 Q. Any complaint been made since the order of the commission was promulgated, as to the rates on hard coal in car-load lots now prevailing from coal shipping points—Superior, West Superior, Ashland and Manitowoc—to points on our line from Hopkins to Madison?

A. No, sir.

Q. Are the rates on hard coal in car-load lots to points on our line from Hopkins to Madison, inclusive, as low from the various coal shipping points such as Superior, West Superior, Ashland and Manitowoc, as are made at opposite points on competing railways?

A. Yes, sir.

Q. Have they been as low at all times?

A. Yes, sir.

Q. What do you understand to be the local rate on hard coal from Duluth to St. Paul and Minneapolis, by the St. Paul & Duluth?

A. I understand it to be $1.25 per ton.

Q. That would be, as you have already stated about eight mills per ton per mile?

A. Yes, sir, using the distance of 156 miles as a basis of figuring.

Q. And that is substantially the same rate per ton per mile as is made by the order of the commission and the extensions from Minneapolis to the various points named in Schedule B?

A. Yes, sir.

Q. How many tons of hard coal did the Minneapolis & St. Louis Railroad Company haul into New Ulm during the year ending June 30, 1898?

A. About 526 tons.

Q. How many car-loads would that be?

A. I haven't the tonnage per car figured out; I should say probably 25 car-loads. I should think it would average that; it might be a little more or less.

115 Q. Can you make any estimate as to the number of car-loads that are shipped from Duluth and other Lake Superior points to St. Paul and Minneapolis in a month—average?

A. Well, I haven't any definite information on that head. Probably the statement that had been asked for will furnish that information.

Q. It would be very large, would it not?

A. Yes, sir, probably a thousand cars a month, I should say.

Q. Now, Mr. Hopkins, you are an experienced trafficman. I will ask you whether it would cost less per ton to handle hard coal from Lake Superior points to St. Paul and Minneapolis, having in mind the way that it is actually handled, than it costs to handle hard coal from Duluth to New Ulm?

A. It would cost less from Duluth to Minneapolis, yes, sir. From Duluth to Minneapolis and St. Paul it would cost less than it would from Duluth to New Ulm, for instance.

Q. Yes, to any points named in Schedule B, say?

A. Yes, sir.

Q. Well, now, what would be the reason of that?

A. Because of the volume of business, enabling the companies handling the business to reduce the cost of transportation.

Q. How is business handled in the transportation of coal between Duluth and Minneapolis?

A. In car lots and probably in train lots. The volume of the business would undoubtedly justify full train-loads of coal at times.

Q. Is it customary to make a less rate on a large volume of traffic than on a less amount?

A. Yes, sir. That is one of the principles recognized in the making of classifications in tariffs. The classifications under which all freight is handled by transportation companies are divided

116 into two classes: the car lot and the less than car lot, the classification of rates on the less than car-lot business being materially higher than the classified rates on car-lot business, because it costs less to handle business in car lots than it does the same character of business in less than car lots.

Q. Would it cost less to handle hard coal in car lots to New Ulm than if it was shipped in less than car lots?

A. Yes, sir.

Q. And would it cost less per ton to handle hard coal in train loads than it would cost to handle it in car lots?

A. Yes, sir.

Q. In other words, the cost of transportation is affected by the volume of the business handled, is it?

A. Yes, sir.

Q. Very materially?

A. Very materially, yes, sir.

Q. Now, a shipment of coal from Minneapolis to New Ulm, you have explained, would not go through without any change. It would be taken out of the train where?

A. It would have to be transferred from one train to another at least three times, and, necessarily, each rehandling costs an additional amount in transportation.

Q. You understand the order of the commission assuming to establish the joint rate and assuming to make a division of the joint rate, would give the St. Paul & Duluth $1, do you?

A. Yes, sir, as their proportion of the through rate.

Q. What is the customary method employed by railroad companies in dividing earnings derived from the transportation of freight covered by a through or joint tariff?

A. There is no fixed rule of dividing revenue between railway companies interested in traffic covered by a joint or through
117 tariff. It is a matter between the companies interested, as to what one is willing to give and the other is willing to accept.

Q. Where there are competing lines reaching certain points between certain points and the connecting carrier which receives the traffic at the terminal of the competing lines, it is then simply a question of which one they can make the best bargain with, is it?

A. That is the rule, yes, sir.

Q. For instance, to illustrate what I mean; if there was an established rate of $1.95 from Duluth to New Ulm or $2.50 from Duluth to New Ulm, and several roads bringing the coal from Duluth to Minneapolis, and we had a line extending as we have from Minneapolis to New Ulm, do I understand then that we would make the arrangements for transportation with the carrier who would give us the best divisions?

A. We would make the arrangement that seemed to our best interest to make for carriage, yes, sir.

Q. Well, to put it into practical operation, now, Mr. Hopkins; suppose a joint rate is made between two railroad companies having facilities for connections, and the rate thus made is less than the sum of the two locals, practically does one of the connecting carriers stand the whole loss or is it divided between them, each one making some reduction from its local rate in order to agree upon a joint rate?

A. Why, as a general principle, without any modifying circumstances, it might be stated that it has been customary between lines in interest, to each bear a portion of the shrinkage; but it would depend largely on circumstances. Now, in this particular instance, having a tariff on hard coal from Manitowoc and Ashland, and from Duluth and from Superior and West Superior to New Ulm,
118 the line from Duluth would have to allow us as great a proportion of the earnings for our haul from Minneapolis as we would be able to derive on a shipment coming from Manitowoc, for

instance, or Milwaukee, or Chicago, as the case might be. It is a question of barter.

Q. Well, is there any such custom or rule for making a mileage pro rate between connecting carriers?

A. That is sometimes done, yes, sir; but not where one line is a portion of a through line competing for traffic in competition with other lines handling traffic in other directions and where the traffic is wholly local to the line receiving the traffic.

Q. It is not a customary thing to do, is it?

A. No, sir.

Q. For instance, the lines east of the Mississippi won't make any mileage pro rate with lines west of the Mississippi, will they?

A. No, sir; nor lines west of the Missouri, either.

Q. It is not a customary thing in practice?

A. No. Under certain circumstances it would be.

Q. Well, they would be exceptional circumstances, would they not?

A. Yes, sir. Where the traffic originates or terminates on your own line locally, every carrier concedes that that traffic belongs to the company on whose line it originates or terminates, and that line gets a larger percentage of the rate than their mileage would entitle them to.

Q. Really it is simply a question of barter between connecting railways as to what one is willing to give and the other is willing to accept as revenue derived from traffic covered by the joint or through tariff, isn't it?

A. Yes, sir.

Q. Now, in reference to the division of revenue derived from
119 shipments of hard coal to New Ulm from points taking the $2.50 rate per ton, what is the least amount that the Minneapolis & St. Louis Railroad Company accepts as their proportion for the service rendered by it?

A. $1.50 per ton.

Q. What is the rate on hard coal from Manitowoc or Ashland, in car-loads, to New Ulm?

A. $2.50 per ton.

Q. And what proportion of that rate would accrue to the St. Louis Company?

A. $1.50 per ton.

Q. I understand then, that the Minneapolis & St. Louis Company has arbitrarily fixed its proportion of the through rate of $2.50 per ton on hard coal to New Ulm at $1.50 per ton, regardless of the point of origin?

A. Yes, sir.

Q. Is that as low a division as you have ever accepted on anthracite coal to New Ulm?

A. Yes, sir.

Q. I will ask you whether you think that the Minneapolis & St. Louis Railroad Company can afford to accept any less rate than the $1.50 per ton for the service rendered in the transportation of hard coal from Minneapolis to New Ulm, bearing in mind the way the

road is operated and the cost of operation, and all existing conditions?

A. I don't think we could afford to accept any less.

Q. In a case where there was a joint rate fixed by agreement between two railroad companies and a reduction was made in the through rate, how would the shrinkage be divided in actual railroad practice?

A. It is a matter of agreement.

Q. Well, would any reference be had to the existing divisions? I refer to a case where there is already an existing through rate by agreement and a reduction is made in the through rate.

A. Well, if a reduction is made by agreement, a fair basis
120 of dividing the reduced rate would be in proportion to the former divisions existing; each should bear such proportion of the shrinkage as their division bore to the former rate.

Q. Under the old rate, then, we had $1.50 per ton and the St. Paul & Duluth had $1 per ton?

A. Yes, sir.

Q. And we got three-fifths of the through rate?

A. Yes, sir.

Q. Now, then, if we were to take the commission's rate of $1.95 from Duluth to New Ulm and bore the shrinkage proportionately—that is what you mean would be an application of that rule?

A. Yes, sir.

Q. That would leave us how much?

A. We would get three-fifths of the new rate.

Q. Instead of getting 95 cents, then, we would get $1.17?

A. Yes, sir, practically.

Q. That is what you mean, isn't it?

A. That would be a customary manner of dividing the shrinkage of the through rate. It would not necessarily follow that that would be the method in this case, because some carrier from West Superior or Ashland or Manitowoc might be willing to accept less; in which event the carrier from Duluth, if he wanted to compete for the traffic, would have to accept the same amount of earnings as its competitor did. As I stated before, there is no fixed rule between carriers for dividing revenue on traffic covered by through tariffs. It is simply a question of barter.

Q. Do you know of any practical instance of that on shipments of hard coal from Duluth?

A. Yes, sir. We have it on our own line existing now.

Q. What are they?

A. The St. Paul & Duluth Company, on coal, to points on our main line, southern division.

121 Q. Can you give me an instance, any station?

A. Well, the rate to points Albert Lea and south.

Q. Well, how is it to Waseca, north of Albert Lea?

A. Well, Waseca—the St. Paul & Duluth accepts less revenue than they accept for the same service on coal transportated to our Pacific and western divisions.

Q. What is the distance from Duluth to Waseca?

A. 232 miles.

Q. What is the rate on anthracite coal in car-loads from Duluth to Waseca?

A. $2.25 per ton.

Q. That is over the St. Paul & Duluth and the Minneapolis & St. Louis?

A. Yes, sir.

Q. Now, what proportion of that rate accrues to the St. Paul & Duluth, and what proportion to the Minneapolis & St. Louis?

A. The St. Paul & Duluth Company receives 90 cents per ton, and the Minneapolis & St. Louis Company $1.35 per ton.

Q. And the St. Paul & Duluth renders the same service that it does in handling coal that would go to New Ulm?

A. Yes, sir.

Q. Now, what percentage of the revenue for the transportation of hard coal from Duluth to Waseca at the rate of $2.25 per ton, does the St. Louis receive, and what percentage does the St. Paul & Duluth receive?

A. The St. Louis Company would receive 60 per cent. and the St. Paul & Duluth Company 40 per cent.

Q. Now, the former rate in effect on hard coal from Duluth to New Ulm before the commission's order was made, was $2.50, wasn't it?

A. Yes, sir.

Q. And what proportion in percentages of that rate did the St. Louis Company receive?

A. It received $1.50 per ton, or 60 per cent.

122 Q. The same percentage that they receive on the reduced or less rate to Waseca?

A. Yes, sir.

Q. What proportion of the proposed commission's rate was allowed the Minneapolis & St. Louis Company by the commission for the transportation of hard coal in car lots from Duluth to New Ulm?

A. 95 cents per ton, or 44 per cent. of the through rate of $1.95.

Q. So that while on the transportation of coal from Duluth to Waseca the Duluth Company voluntarily allows us 60 per cent. and gave us 60 per cent. under the old tariff to New Ulm, under the commission's rate we give them 56 per cent. and we take 44 per cent.?

A. We would if we accepted it.

Q. Yes, if the commission's rate were put into effect.

A. Yes, sir.

Q. Now, you spoke of the rate on shipments of anthracite coal from Duluth to points south of Albert Lea on the main line. What proportion of the through rate did the St. Paul & Duluth Company accept?

A. 85 cents per ton.

Q. And the Duluth Company voluntarily accepts 85 cents per ton for exactly the same service for which the commission allows them $1 a ton by their order; is that correct?

A. Yes, sir.

Q. For hauling the same product over the same rails and making delivery of the goods at the same point?

A. Yes, sir.

Q. Are those rates higher or lower than the Waseca rate?

A. Higher.

Q. How much of a factor in the division of the revenue is the distance that each line hauls traffic?

A. Not very much in the division of revenue on business covered by joint tariffs.

123 Q. Isn't it a fact that each company is conceded a greater proportion of revenue on business destined to its local stations than it would be entitled to under a mileage pro rate of the distance which each company carries the commodity?

A. Yes, sir.

Q. That is railroad custom and railroad practice and operation, is it not?

A. Yes, sir.

Q. That the company upon whose line the point of destination is situated gets a larger share of the tariff rate than it would get under a simple mileage pro rate?

A. Yes, sir.

Q. It furnishes the market for the commodity?

A. Yes, sir.

Q. What proportion of the revenue do we receive on shipments covered by joint through rates from Chicago to New Ulm?

A. On hard coal?

Q. Yes.

A. 63 per cent. The rate is the same from Chicago to New Ulm as from Duluth to New Ulm.

Q. And we get 63 per cent.?

A. That is, it is the same as the rate was from Duluth to New Ulm.

Q. Yes, the old rate.

A. Yes. $2.50 per ton.

Q. Now, if that were divided on a mileage pro rate, what percentage would we get?

A. About 38 per cent.

Q. Now, under the custom you have spoken of, giving the company upon whose line the point of destination is situated a larger share of the revenue than it would obtain if the revenue were prorated on a mileage basis—is that the case with other points on our line as well as New Ulm?

A. Yes, sir.

Q. There was no objection on the part of the Duluth lines to paying the divisions which you have testified to, was there?

A. Not so far as I am aware.

124 Cross-examination.

By Mr. O'BRIEN:

Q. Mr. Hopkins, as I understand it the number of tons of coal which during the year ending June 30 1899 were hauled over your

road to the points mentioned in Exhibit B was something over 2,400 of hard coal?

A. It was about that. It was 1898, instead of 1899, though.

Q. Well, was it about the same in 1899?

A. I don't know; I haven't figured 1899 yet. I should think it would average about that year in and year out.

Q. There is some increase each year, is there not?

A. Not very materially. There might be a small increase, but not very materially.

Q. Now, have you estimated the number of tons of hard coal destined for those points, carried one mile?

A. No, sir.

Q. You have given the shipments made to the different stations, and that could be compiled, could it not?

A. Yes, sir; we can find that if you care for it.

Q. Now, when you have spoken of the average reduction made by the commission, you have simply spoken of the average deduction that was made, without reference to the amount of coal that was actually carried?

A. Yes, the average reduction per ton, taking the rate to each station and taking the number of stations.

Q. Taking the rate to each station, and the average rate for the entire number of stations, and then the rate as fixed by the commission?

A. Yes, sir. Understand, the reduction would be greater at some stations and less at others, so that the average for all those stations would be 53 cents, I think.

125 Q. But that average has been made without reference to the actual amount of coal carried at each station?

A. Yes, sir.

Q. So that that average which you have given—average reduction of 53 cents a ton, I think—you could not from that arrive at the actual loss of revenue from this reduction?

A. No, if you used that as an average it wouldn't be fair, because the loss in revenue would be greater, because the reduction is greater to stations using the greater amount of coal. For instance, to New Ulm the reduction would be 65 cents a ton, and New Ulm uses more coal than any other one station.

Q. I simply wanted to find out if that could be taken as a fair basis to arrive at the actual loss of revenue. It couldn't?

A. No, it would be unfair to us to take that basis.

Mr. CLARKE: You mean by "us," the Minneapolis & St. Louis Railroad Company?

A. Yes, sir. It would not be a fair basis to figure on.

Q. Now, I believe you have testified that the average rate per ton per mile for freight upon the Minneapolis & St. Louis road, prior to the order of the commission, was 1.112 cents—was it not?

A. I don't know; I don't think I testified in respect to that at all. I think Mr. Nay——

Mr. CLARKE: Mr. Nay testified to that.

Q. Well, that is the fact, is it not?

A. Well, whatever the figures are, I don't recollect them. Whatever he testified to, I presume is correct.

Q. Now, will you please name some commodities for which the tariff is lower than that?

A. I couldn't do that without the records of the traffic movement.

126 Q. Can you give us the lowest rate per ton per mile that was charged by the Minneapolis & St. Louis railroad upon any article?

A. I could not without reference to the records, no, sir.

Q. Have you got those records with you?

A. No. That wouldn't come within my jurisdiction; that would be in the accountant's office. You would have to take the lowest-priced commodity, whether it was coal or sand or brick, whatever it was, and then figure the amount earned per ton per mile.

Q. Well, can you give any of the higher-priced commodities?

A. I can give you a list of commodities taking a higher rate than coal, but I cannot give you the average cost per ton per mile on any of them.

Q. Well, give us some that would be classified higher.

A. Oh, merchandise, dry goods, fruits, grain, lumber.

Q. What elements are taken into consideration in fixing the tariff upon any article? Just in a general way.

A. Well, in making a tariff today, you would put in rates on any commodity on any particular portion of the line to line up the rates in competition with those at opposite points on other railways.

Q. Well, of course that is a general principle.

A. That is the practical way of putting it.

Q. But in classifying articles?

A. Well, all articles are classified under the classification, you know, and their class fixed by the classification.

Q. Well, the expense of handling an article is one of the considerations that is taken into account, is it not?

A. Yes, in making a classification, the cost, the form and size of the package, is taken into consideration as an element in the cost of handling it; the value of the package is taken into consideration, and also whether it is released or not released, and the cost

127 of handling it by the railroad companies, and as to whether it can be shipped in car lots or in less than car lots.

Q. As to whether or not it is a perishable article?

A. Yes, sir, that would be an element entering into it.

Q. As to whether or not it is an article which requires particular watchfulness upon the part of the company to preserve it—that would be a consideration, would it not?

A. Yes, sir, that would be an item in the cost of transportation.

Q. As to whether it was an article which could remain in cars upon a side track for a greater or less length of time would be taken into consideration, would it not?

A. Whether it was perishable or not, yes, sir.

Q. Well, "perishable" might mean what you would describe as

the perishable character of fruit, because it would decay in a short time?

A. Yes, sir.

Q. Also as to whether or not it would be destroyed in case of a wreck—liable to be destroyed in the case of a wreck—that would be another consideration, would it not?

A, Yes, sir.

Q. An article might be classed as perishable without being at all perishable from mere lapse of time?

A. Yes, sir.

Q. Or it might be perishable merely by the delay of a few days; isn't that the case?

A. Well, it might be, yes. You might not be able to ship corn in July, but you could ship it in October.

Q. In other words, the difficulty of handling the article, cost of handling it, and the responsibility assumed by the railway company.

A. The size and form of the package.

128 Q. The size and form of the package are all taken into consideration?

A. Yes, sir.

Q. Now, it is true, as you say, I believe, that the profit per ton per mile on through freight is greater than that on local freight?

A. That is just the reverse of the proposition. The cost of handling it is less.

Q. Well, now, what do you designate as through freight?

A. Any traffic that is taken in through trains; that is, trains that do not do local work.

Q. That does not necessarily mean interstate commerce, does it?

A. Oh, no; not at all.

Q. Freight that is carried from one terminal point to another would be through freight, would it not?

A. Not necessarily. For instance, if we had a train-load of freight going from Minneapolis to Chicago, we would carry it through to Albert Lea and connect with another carrier; we would call that through freight. But if that train consisted of what is known as peddlers, stopping and distributing, discharging as it went along, that would be a local train.

Q. Now, why is it that the cost of handling through freight is less than the cost of handling local freight?

A. The cost of labor is more, because more labor is required in handling local freight. The cost of fuel is greater, because more is used in shifting your cars, stopping your train, discharging and receiving freight. The cost of handling by your agents and employés through your warehouses is greater, and wear and tear on your cars and machinery make it more expensive than on through consignments which do not require that handling.

Q. Through consignments are generally in car-load lots, also, are they not?

A. Not necessarily, no, sir.

129 Q. Not necessarily, no, but generally?

A. No, sir, I wouldn't say generally. We receive a great

deal of merchandise in less than car lots that is through business. It is loaded up so far as possible in through cars which are not filled up, but it consists of various articles consigned to various consignees.

Q. Now, as to the method in which coal in car-load lots was handled jointley by your company and the Duluth Company prior to the making of the rate by this commission, is the thing I wish you would describe.

A. We received the cars from the St. Paul & Duluth Company——

Q. At what point?

A. At St. Paul or Minneapolis. They were taken into our——

Q. Before we get any further, you say "at St. Paul or Minneapolis"?

A. Yes, sir.

Q. Was it the custom to receive them at both of these points?

A. Yes, sir.

Q. Now, at whose convenience was that determined?

A. I should say perhaps both companies.

Q. Both companies?

A. Yes, sir. The major portion of the business probably was interchanged at Minneapolis.

Q. The great bulk of the cars were changed at Minneapolis?

A. I think that is true of coal. That is a matter that would be in the hands of the operating people and not in the freight department.

Q. Now, at what point in Minneapolis?

A. Where we have intersection of tracks; either on the east or west side of the river; I can't answer that, because I really do not know.

Q. Has the St. Paul & Duluth Company yards at Minneapolis?

A. I think they have, on the east side of the river, yes, sir.

1130 Q. Do their yards connect directly with your yards?

A. Yes, sir. That is there is a joint transfer track.

Q. The yards do not overlap each other?

A. Oh, no.

Q. Then the custom was that the coal destined for your road, in the great majority of cases, was hauled into your yards by the St. Paul & Duluth?

A. It would be set on the transfer track, yes, sir.

Q. And it was then taken by your road, without change of cars?

A. Yes, sir.

Q. And when your trains were made up, hauled along on your roads?

A. Yes, sir.

Q. When delivered by your company, where was the coal delivered at the various stations?

A. At those local stations?

Q. Yes.

A. Well, that would depend. If it was for a consignee having a coal shed, on the track, it was delivered at the coal shed; the car was set at the coal shed. If the consignee did not have a coal shed, then it was set on the delivery track.

Q. In any instance did the rate established by you include the

handling of the coal? That is, the taking of the coal from the car by your company.

A. Taking it from the cars?

Q. Yes.

A. I don't know that I understand what you mean.

Mr. CLARKE: Unloading it, do you mean?

Mr. O'BRIEN: Yes.

The WITNESS: No, sir.

Q. Nor does the rate established by the commission contemplate the unloading of the coal from the cars?

A. I don't know, sir. I don't suppose it does.

Q. So far as the handling of the coal is concerned, the hand-
131 ling by your company consisted and would consist entirely of simply taking the cars from the connecting track which you have spoken of (transfer track), attaching them to your train, and delivering that same car on the side track at the point of delivery?

A. Yes, sir.

Q. Now, hard coal in car-load lots would ordinarily come under one of the cheaper classifications, would it not?

A. Yes, sir.

Q. What article of commerce would naturally be classified at a lower rate?

A. A number of articles are classified at lower rates, but there are a good many articles that might be classified very much higher which might be hauled cheaper.

Q. I know, but I am asking you as a practical gentleman, what articles of commerce would naturally be classified at a lower rate.

A. Why, brick, stone, clay, all might be classified lower. A great many commodities are taken out of the classification and put into what is known as the commodity tariff and might probably be carried lower under the commodity tariff, or possibly carried lower than the coal rate necessarily would be. For instance, wood tariff; we might make a less rate on wood than on coal; commercial conditions might necessitate it. That would be taken out of the classification and put into the commodity tariff.

Q. Well, was there a less rate made on wood than there was on coal?

A. I can't tell that without referring to another schedule.

Q. How would it be about soft coal?

A. Soft coal would take probably a less rate than anthracite coal.

Q. Why would it be less?

A. The value is less.

132 Q. As a matter of fact, you could get a greater quantity of hard coal, could you not, on a car, than soft coal—a greater weight?

A. No.

Q. The weight would be about the same?

A. Load up the car to its capacity; the intention is to load up to its capacity.

Q. In either case, with either hard or soft?

A. Yes. The difficulty in handling commercial coal either hard or soft, is in a fellow's orders; he might order a car of 12 or 14 tons and you would have to transport that in a car in place of carrying thirty tons, so that it makes the car-load smaller than it ought to be—both hard and soft coal.

Q. Now, can you tell any other commodities?

A. Varying conditions from year to year might necessitate commodity rates on most any product, less than your coal rates. Take hay; commercial necessity might seem to demand a very low rate on hay, for fear it would spoil—in which instance the carriers or owners wouldn't get anything out of it, and we might bring it into the market very cheap.

Q. Well, of course, Mr. Hopkins, that isn't an answer to my question. I suppose that in railroad business, as in everything else, condition- may arise that might change tariffs or might change circumstances; but I am asking you as to natural——

A. Well, I want to be fair in the matter.

Q. What commodities besides those which you have mentioned can you name that would naturally be classed at a lower rate than coal? You said brick, stone, clay. Soft coal?

A. Yes.

Q. And possibly hay?

A. Yes, and salt. All articles classified under class E. Coal would be classified under class D in the classification. As a
133 rule, coal is handled under what is known as the commodity tariff, but the classification of hard coal is class D.

Q. Is D the lowest class?

A. No, sir, E.

Q. E is the lowest class?

A. Yes, sir. Now, those articles I have mentioned would come under class E, and it is a fact that conditions arise very often where high-priced commodities are taken on very nominal rates because commercial necessities seem to require it.

Q. Coal would be classed under class D?

A. Coal would be classed under class D, yes, sir.

Q. And all of the commodities which are classed under A, B and C, would be higher?

A. Yes, sir.

Q. A higher classification?

A. Yes, sir.

Q. Require a higher rate. Now, the manner in which the coal would be handled, in any given instance, would also affect the reasonableness of the rate to be charged for it, wouldn't it?

A. I don't know but it would. I don't know that I understand what you mean.

Q. Well, for instance, you say coal is properly classed in class D?

A. Yes, sir.

Q. That is one of the low classifications?

A. Yes, sir.

Q. Now, if that coal was to be carried in single ton lots and had

to be handled more or less by the company hauling it, the company carrying it would be entitled to charge a higher rate for it than if it was carried in car-load lots without any handling by the company?

A. That would change the classification, if we handle in less than car-load lots. Class D is coal in car-load lots. If you ship coal in less than car lots that changes the classification of it; that would be a higher classification.

134 Q. The conveniences furnished by a railroad company or by a carrier for the handling of any particular class of freight would also affect the reasonableness of the tariff, would it not?

A. I don't know that it would.

Q. Would it not be more reasonable to charge a high rate for a commodity which you received in your warehouse and afterwards loaded upon your cars and again unloaded into a warehouse, than for a commodity which required none of that work?

A. Yes, but that would not be conveniences furnished by the company.

Q. Those would not be conveniences furnished by the company?

A. I shouldn't consider them so.

Q. You consider freight-houses as conveniences furnished by the company, don't you?

A. I should say they are necessities for handling the business.

Q. Now, then, the handling of this coal requires absolutely nothing of that sort, does it? You have no coal sheds?

A. No, sir, except for our own company coal.

Q. You receive this coal in car-load lots from the other carriers and simply deliver it on the side-track at the point of destination?

A. Perform the ordinary transportation service, yes, sir. I don't know that I get your point clearly. But take a threshing machine, for instance, to a local station; we would not charge any higher rate for that whether we had a platform to load that on or whether the consignee had to unload it from the car; that would be a convenience, but we would not exact a higher rate whether there was a platform or not. If we erected a platform, that certainly would be a

135 convenience for the owner of that property, it might not be for the railroad company, but it would not add to the rate any.

Q. Well, what I am trying to get at is this; take, for instance, threshing machines, dry goods, a great many kinds of commodities; they do require the erection of a platform or freight-houses, and you have them erected?

A. We have to furnish reasonable——

Q. So that if at any time it becomes a necessity, you can use them?

A. We have to furnish reasonable facilities for the care of freight.

Q. But so far as hard coal is concerned, you do not require them and have not erected any such conveniences?

A. I think I understand what you mean. The nature of the property does not require anything beyond a vehicle for its transportation.

Q. And that is one of the reasons that it is put in the low classification, is it not, amongst others?

A. Why, not more so than wheat and lumber and all other carlot commodities.

Q. Of course there are other commodities that come in the same classification or that are subject to the same rules, but I say that is one of the considerations that is taken in account in classifying those articles?

A. Its value and indestructibility, and one thing and another of that kind, would have to be considered, yes, sir. Coal ordinarily is construed as a low priced transportation commodity.

Q. What is the distance from Duluth to Fergus Falls by the Northern Pacific road?

A. 217 miles.

Q. And the rate is how much?

A. $2.45 per ton, according to their schedule.

Q. And that is how much per ton per mile?

A. As I figure it, it is 1.129 cents.

136 Q. Now, what is the distance from Duluth to Fergus Falls by the Great Northern?

A. I don't know, sir; I think it is somewhat longer, but don't know how much.

Q. What is the rate on that road?

A. I don't know that. I assume it must be the same as on the Northern Pacific, however, or they wouldn't get any business.

Mr. CLARKE: The short line always makes the rate.

Q. The short line makes the rate?

A. As a rule, yes, sir.

Q. Now, you can't tell us what the rate per ton per mile is on the Great Northern from Duluth to Fergus Falls?

A. No, sir, I haven't the distance here.

Q. Can you tell us what the distance is from Duluth to Breckenridge by the Great Northern?

A. No, sir.

Q. Nor the rate to that point on that road?

A. No, sir, but I can give you the short-line distance there.

Q. No, but I mean the long-line rate and distance. The Great Northern hauls coal to all those points, does it not?

A. I presume so.

Q. Is it competing for that business?

A. I should think so.

Q. The Great Northern hasn't found it necessary to go out of the business of hauling coal there because of the rate fixed by the short line?

A. I don't know. I suppose not. I know we haul lots of business that we don't make much on because the short line fixes the rate.

Q. Now, what is the distance from Duluth to Madison?

A. 331 miles.

Q. And what is the rate?

A. $2.50 per ton.

Q. That was the joint rate over the St. Paul & Duluth and the Minneapolis & St. Louis?

A. Yes, sir.

137 Q. And what is that per ton per mile?

A. About .76 of a cent per ton per mile.

Q. Now, how was that rate fixed at that amount?

A. What makes the rate $2.50 on that?

Q. Yes.

A. To enable the communities on our line to get their coal as cheaply as the communities at opposite points on competing lines.

Q. Is there a shorter line from Duluth to that point than over the St. Paul & Duluth and Minneapolis & St. Louis?

A. To Madison?

Q. Yes.

—. No, sir.

Q. Well, what competition is there there?

A. Why, the competition is from a competing point opposite, on another line.

Q. Well, what line is that on?

A. On the Great Northern and the C., M. & St. P.

Q. On the Great Northern and the Chicago-Milwaukee?

A. Yes, sir.

Q. What is the distance from Duluth to Madison on the Great Northern?

A. I think it is 250 miles to Appleton. It doesn't reach Madison.

Q. What is the nearest point reached by the Great Northern?

A. I think probably Appleton would be.

Q. And what is the distance from Duluth to Appleton on the Great Northern?

A. 250 miles.

Q. As against 331 on the Minneapolis & St. Louis and St. Paul & Duluth?

A. Yes, sir.

Q. So that, in that case, also, the short line fixes the rate?

A. Yes, that is the invariable custom.

Q. And prior to the making of this order, the St. Paul & Duluth and Minneapolis & St. Louis met that rate?

A. Well, you understand the order didn't affect Madison.

138 Q. Well, I say you met that rate that was fixed by the short line?

A. Yes, and we meet it yet.

Q. Are you still competing for that business?

A. Yes, sir.

Q. And are giving to the St. Paul & Duluth $1 of that $2.50?

Mr. CLARKE: If that question refers to rates not involved in this controversy, I advise you not to answer it, I instruct you not to answer it.

The WITNESS: Madison is not one of the points to which the commission has fixed the rates.

Q. The joint rate from Duluth to Madison, you said, Mr. Hopkins, was $2.50?

A. Yes, sir.

Q. Have you at the present time a joint-tariff agreement with the St. Paul & Duluth concerning that rate?

Mr. CLARKE: You need not answer that question.

Q. Do you decline to answer that question?

A. Yes, sir, I do, by advice of counsel.

Q. If the Minneapolis & St. Louis Railroad Company and the St. Paul & Duluth have such a joint-tariff agreement, I ask you to state what it is.

Mr. CLARKE: Answer that you decline to answer the question, by advice of counsel.

The WITNESS: I will make that answer.

Q. You decline?

A. Yes.

Q. Why do you decline to answer that question, when on your direct examination you gave the rate to Madison and also gave the rates and the division to Waseca and Albert Lea?

Mr. CLARKE: Counsel advises the witness that he may answer as to what the rate is to Madison, but whether or not there is a joint rate and as to divisions he need not answer. We admit we have a rate to Madison of $2.50; whether it is a joint rate or what
139 the divisions are, the witness is instructed he need not answer.

WITNESS: I will answer that we haven't any at the present time from Duluth to Madison. If I have made any answer contradictory to that, I would like to have it stricken out. From Duluth to Madison, Minnesota, we haven't any rate on hard coal.

Q. I understand that prior to the withdrawal of the tariff which you mentioned with the St. Paul & Duluth road, you did have a joint rate to Madison?

A. Yes, sir, we did have.

Q. And that rate was $2.50 per ton?

A. Yes, sir.

Q. Now I ask you what proportion of that rate was received by the St. Paul & Duluth under your tariff agreement?

Mr. CLARKE: On all our rates we got $1 a ton.

A. $1 per ton.

Q. You have not stated that that was the universal division between the Minneapolis & St. Louis and the St. Paul & Duluth, have you? For instance, at Waseca there was a different division?

A. Well, that is a different story. I have no objection, if Mr. Clarke does not object, to telling you the division from Duluth to Watertown. (To Mr. Clarke:) Is there any objection to stating that that was the division allowed the Minneapolis & St. Louis on all that line?

Mr. CLARKE: Of course it was.
Mr. O'BRIEN: Prior to the calculation of the tariff?
Mr. CLARKE: Yes. $1 per ton.

Q. Now, what was the reason that a different division was made on the other line, for instance at Waseca and Albert Lea?
A. Competition.
Q. What was the competition there?
A. The rates were reduced to that territory because they
140 wanted to participate in the traffic from Duluth. They were reduced from Chicago, I should say.
Q. What are the roads that compete at those points?
A. Well, the Chicago & Northwestern road.
Q. Consequently the Duluth road met the competition by reducing the amount of the joint rate which they received?
—. Yes, sir.
Q. So that all of these questions with regard to how you divide your rates with each other and what reduction is made and how the revenue is divided when a reduction is made, depends upon competition, does it not?
A. Well, it depends upon the agreement that the parties made.
Q. Yes, but the agreement is made in view of the existing condition?
A. Well, of course. Tariffs are made in view of existing conditions.
Q. Well now, there is competition from the Lake Superior point to the twin cities, is there not, on hard coal?
A. There are different carriers, yes, sir.
Q. The twin cities are distributing points, are they not?
A. Certainly.
Q. And there is competition from the lake points to the twin cities between different roads?
A. Between different carriers, yes, sir.
Q. The amount of the joint tariff which the road receives that carries the coal from one of the Lake Superior points to the twin cities is fixed by that competition, is it not, largely?
A. I cannot say. I suppose it is fixed by agreement between themselves.
Q. Yes, of course it is fixed by an agreement, but the agreement is arrived at in view of the competition, is it not?
A. I can't say as to that; I don't make those tariffs.
141 Q. You don't know that?
A. No, sir; I don't know anything about that.
Q. Well, don't you know—you make these agreements?
A. Not between Duluth and St. Paul and Minneapolis.
Q. Don't you take part in the negotiations?
A. Not between St. Paul and Minneapolis and Duluth.
Q. Well, I wasn't talking about between St. Paul, Minneapolis and Duluth. I say joint-tariff agreements that are made between the roads taking the coal from St. Paul and Minneapolis, with the roads which bring it to St. Paul and Minneapolis?

A. If it goes to our line, certainly we would be parties to it.

Q. And you personally conduct the negotiations, don't you?

A. As a rule, yes, sir.

Q. Now, you are able to arrive at the terms which you make, because of the competition from Lake Superior points to St. Paul and Minneapolis, are you not?

A. No, not always.

Q. That is one of the elements?

A. That would be an element—competition between lines.

Q. Yes.

A. And competition between lines from Wisconsin and from Chicago.

Q. Is it an invariable rule that the carrier upon whose line the freight originates, receives a less proportion of the joint tariff than the carrier who delivers the freight to the consignee?

A. No.

Q. Let us suppose that the conditions were reversed and that there was only one line reaching St. Paul and Minneapolis from Lake Superior points, but a great many competing lines starting from St. Paul and Minneapolis and running to the distributing points; the conditions would be just reversed, would they not?

A. No, sir.

142 Q. Would it not be, then, that the roads which gave to the single line the greatest proportion would be likely to receive the bulk of the freight?

A. Not if it is destined to local points on those lines, it wouldn't.

Q. You don't answer my question; maybe you don't understand it. I said if the competition was to the point of consignment and the single line was from the point where the freight was received to the Lake Superior distributing point. The conditions would be just reversed, would they not?

A. No, sir.

Q. They wouldn't be?

A. No, sir; the chances are that the division would be less to the Duluth line.

Q. Then you think that the line upon which all of the freight must originate and which must haul the freight, would not deliver it to the competing line which would give it the largest proportion?

A. Well, that is a different case. It doesn't necessarily have to originate on that line, it may come from some other point, and the line terminating at Lake Superior must make a bargain with its connecting line that is satisfactory, otherwise it can't get its commodity in there at all.

Q. Well, you imagine always a different case from the one I put to you. I understood you on your direct examination to say that it was an invariable rule that the carrier upon whose line the freight originated——

A. Or terminated.

Q. No, originated, received a less proportion of the joint tariff than did the carrier upon whose line the consignee resided.

A. No, that is not true. If I made that statement, I didn't intend to make it.

Q. That would depend upon where the competition was?

A. Yes, sir.

Q. Yes, of course, it must.

143 A. What I mean to say is this: That if traffic is destined to your local territory or is going from your local territory—that is, originating or terminating on your line, you would get a larger proportion under the practice of making joint rates and divisions of joint rates than you would get if that business was in competition with other lines, on the theory that that is your local business and if the other fellow wants to participate in it he has got to pay something for the carrying of it.

Q. Now, what is the short line from Duluth to St. Paul and Minneapolis?

A. I think it is the St. Paul & Duluth road.

Q. And is that also the shortest line from any Lake Superior point to St. Paul and Minneapolis?

A. I don't know, but I think it is.

Q. None of the other points on Lake Superior which have been mentioned are within the State of Minnesota, are they?

A. No, sir. Superior, West Superior, Ashland and Bayfield are in Wisconsin.

Q. All those points are outside the limits of the State of Minnesota?

A. Yes, sir.

Q. What is the distance by the shortest route from Chicago to Waseca?

A. I don't know.

Q. Can you approximate the distance?

A. Probably 450 miles. If I had a guide I could tell you.

Q. About 450 miles?

A. I should say something in that neighborhood.

Q. After the commission had made its order fixing the rate to the points named in Schedule B, you withdrew from all tariff agreements with the St. Paul & Duluth road—your road did?

A. We canceled the joint tariff with the St. Paul & Duluth road on that particular commodity.

144 Q. Since that time have you refused to haul coal consigned to these points, originating on the St. Paul & Duluth road?

A. No, sir.

Q. What is the present attitude of the Minneapolis & St. Louis road with reference to coal consigned to those points and brought from Duluth on the St. Paul & Duluth road?

A. As a common carrier we handle any business that is tendered to us, any business that is properly handled by a common carrier.

Q. So that you are prepared to accept any coal offered you by the St. Paul & Duluth road at this time?

A. Yes, sir.

Q. From any of these points?

A. To any point on our line; yes, sir.

Q. Now, the Minneapolis & St. Louis railroad has refused to accept the tariff fixed by the commission?

A. Yes, sir.

Q. Or to recognize the right of the commission to fix that joint tariff; that is the case, is it, Mr. Hopkins?

A. Yes, sir; and the division too.

Q. Mr. Hopkins, will you explain the matter of the refusal by the Minneapolis & St. Louis Company to receive a car-load of coal from the St. Paul & Duluth Company?

A. We never refused to accept any car-load of coal from the St. Paul & Duluth Company, except that we did refuse to receive a car-load of coal tendered to us under a joint tariff which we did not have with the St. Paul & Duluth Company.

Mr. CLARKE: Now, you may state, if it was a fact, any offer that was made or anything that was said as to our willingness to transport it under our regular tariff.

The WITNESS: We were perfectly willing to take it under the tariff which existed, which was our local tariff, the only tariff which we had.

145 Mr. MILLS: That was under class D, wasn't it?

The WITNESS: Yes, sir.

Examined by Mr. ARMSTRONG:

Q. Mr. Hopkins, referring to those Albert Lea rates, the rates from Albert Lea south over your line, the rates in that territory are largely fixed by competition of Chicago and Lake Michigan points, are they not?

A. Yes, sir; we also have rates from Chicago and Milwaukee to our Western and Pacific divisions, and Southwestern division.

Q. So that under the system of making joint rates by bargaining between the companies, the St. Paul & Duluth Company practically has to accept what is offered them to those points or go out of business?

A. Well, I wouldn't state it in exactly that way.

Q. Well, perhaps that is unfair, but they have to accept a proportion which would be equal to the Chicago proportion; that is, they have to accept a rate which would make your earnings on the same basis as your earnings would be under an arrangement with the Chicago lines?

A. That is it. That is, we earn a certain amount on coal coming from Chicago, whether it goes to our Second division, our Pacific division, our Western division or our Southwestern division. Now, then, in making a tariff from Duluth, with the St. Paul & Duluth or any other company, the question is, what can we afford to accept on that business coming from Duluth? And it is simply a question of bargain. We determine what we think we ought to have, and it is a matter of joint conference between your company and our company or other companies interested.

Q. That is, you would take care of the interests of your
146 line, and we either have to accept what is left or go out of business?

A. Well, it is a matter of give and take. We should try to be fair to each other

Q. The same condition of affairs applies at Waseca?

A. Yes, sir; and New Ulm.

The taking of testimony was here discontinued, to be resumed at 10 a. m., September 1.

September 7, 1899, the hearing was resumed pursuant to adjournment.

Messrs. T. D. O'Brien and Ira B. Mills appeared in behalf of the State.

Mr. Armstrong appeared in behalf of defendant St. Paul & Duluth Railroad Company.

Mr. Swan appeared in behalf of defendant Minneapolis & St. Louis Railroad Company.

It is admitted that at all times since the year 1878 and at the present time the legal rate of interest in this State has been and is seven per cent. per annum; that from and after November 1, 1899, the legal rate of interest in this State will be six per cent. per annum.

IRA B. MILLS, recalled in behalf of defendants, testified as follows:

Examined by Mr. SWAN:

Q. (M. & St. L. Ex. A shown to witness.) I will ask you if that is the same blue print which was offered in evidence by the petitioners at the time this case was heard before the railroad and warehouse commission.

A. I think so. Whether it was a blue print that was offered, or something else, I don't know. I guess that is a blue print of the exhibit that was offered. I don't know but what Mr. O'Brien has the original exhibit, but this is the map that was offered in evidence at the time of the hearing, I believe.

Q. Well, it was the same thing as this?

A. Practically so.

147 Q. Will you kindly state what that blue print shows?

A. Well, sir, I can't tell you all it shows. This was prepared by our statistician.

Q. This line here (pointing on the exhibit), does that show the line from Duluth to Minneapolis?

A. The St. Paul & Duluth; I presume so.

Q. And these figures, what is that, the mileage?

A. I think that is the mileage.

Q. And is that the mileage on which you based the local rate between those points?

A. Well, I testified the other day as near as I can to that, and I had at that time a memorandum on which I based my testimony. Now, from this exhibit I can't. The impression I had at that time was that it was 156 and 89, and I think that is correct.

Q. Then the mileage that you figured on was 156 miles from Duluth to Minneapolis?

A. Yes.

Q. That is what you based the rate on?

A. Well, I say we figured that in making the rate—156 miles to Minneapolis and 89 to New Ulm.

Q. Well, it was on that 156 that you based that rate?

A. Yes, sir.

The defendant Minneapolis & St. Louis Railroad Company then rested.

The hearing was then discontinued, to be resumed at 10 a. m. October 11, 1899.

October 11, 1899, the hearing was resumed, pursuant to adjournment.

Messrs. T. D. O'Brien and Ira B. Mills appeared in behalf of the State.

Mr. Armstrong appeared in behalf of the defendant St. Paul & Duluth Railroad Company.

Mr. Clarke appeared in behalf of the defendant Minneapolis & St. Louis Railroad Company.

148 THOMAS YAPP, sworn in behalf of plaintiff, testified as follows:

Examined by Mr. O'BRIEN:

Q. What is your name, please?

A. Thomas Yapp.

Q. And what is your business?

A. Accountant for the railroad commission.

Q. Prior to that time what had been your business?

A. I had been in railroad offices, railroading, principally.

Q. In what capacity?

A. I had been in the general freight agent's office and also in the auditing department.

Q. Have you examined the statements made by Mr. Nay, of the Minneapolis & St. Louis road, showing the gross receipts of that company, the total expenses of the company?

A. I have.

Q. And also the statements made by him as to the receipts and expenses of the various divisions of the road?

A. I have.

Q. State whether or not you have had any other data furnished you aside from the testimony given by Mr. Nay?

A. In what way do you mean?

Q. Were you given a statement by Mr. Nay?

A. Yes, I took the figures which Mr. Nay used before this court some time ago, in evidence.

Q. That is, the table prepared by Mr. Nay, from which he testified?

A. From which he testified, yes.

Q. (State's Ex. 1 shown to the witness.) Please state what that is.

A. This is a statement showing cost of operation, gross earnings, and average cost of operation per ton per mile for the year ending June 30, 1899, taken from figures furnished by the Minneapolis & St. Louis Railroad Company; also a statement showing the
149 estimated cost per ton per mile in Minnesota, on the whole line; also the average receipts per ton per mile in Minnesota, on the whole line, taken from annual reports filed with the railroad and warehouse commission from the year 1890 to date.

Q. Is that statement correct?

A. I believe it to be.

Q. I mean are the computations contained there correct?

A. Yes, sir.

Q. According to the estimates and figures furnished?

A. Yes, sir.

Q. You say that the estimates as to the cost and earnings for prior years, which appear at the foot of State's Ex. 1, were taken from the annual reports of the Minneapolis & St. Louis road filed with the railroad and warehouse commission pursuant to law?

A. Yes, sir.

Mr. O'BRIEN: We offer in evidence Exhibit 1.

Q. (State's Ex. 2 shown to the witness.) Please state what that is.

A. A statement showing cost of operation, gross earnings, and average cost of operation per ton per mile, for the year ending June 30, 1899, taken from the figures furnished by the Minneapolis & St. Louis Railroad Company, applicable to the Western, Pacific & New Ulm divisions.

Q. This statement was compiled from what?

A. From the figures which were used by Mr. Nay in his evidence.

Q. And is, as I understand, first a computation of the cost per ton per mile on each of the three divisions which you have mentioned——

A. Yes, sir.

Q. —and then the average cost per ton per mile on all three of them?

A. Yes, sir.

Q. And are the computations contained in State's Exhibit 2 correct?

A. They are.

150 Mr. O'BRIEN: State's Exhibit 2 is offered in evidence.

Q. (State's Ex. 3 shown to the witness.) Please state what that is.

A. A statement showing mileage, rates, and rates per ton per mile based on rates made by the railroad and warehouse commission in the New Ulm coal-rate case.

Q. What is indicated in the first column of figures?

A. The mileage from Duluth and Minneapolis to the points covered by the commission's order.

Q. Well, the first column is the mileage from Duluth, isn't it?

A. Yes, sir.

Q. The second column is the mileage from Minneapolis?
A. The mileage from Minneapolis; yes.
Q. The third column is what?
A. The third column shows the old rate per ton from Duluth, and the next column shows the commissioners' rate.
Q. The third column is the former rate?
A. The former rate; yes.
Q. Which was put in force voluntarily by the agreement of the Minneapolis & St. Louis and Duluth roads?
A. Yes, sir.
Q. And the fourth column shows what?
A. Shows the rate ordered by the commission.
Q. Now, the fifth column?
A. The fifth column shows the Minneapolis & St. Louis proportion rate per ton from Minneapolis to the points covered by the commissioners' order.
Q. And the sixth column?
A. The sixth column shows the rate per ton per mile—the Minneapolis & St. Louis road's proportion.
Q. And the average rate per ton per mile allowed to the Minneapolis & St. Louis road is what?
A. 1.115 cents.
151 Q. That would be about 11⅛ mills per ton per mile, would it not?
A. Yes, sir.
Q. Now, will you explain the process by which you arrived at the average rate per ton per mile?
A. By adding up the total mileage as shown from Minneapolis to points covered by the commissioners' order, and dividing the sum into the rate per ton that would be earned by the Minneapolis & St. Louis Railroad Company.

Mr. O'BRIEN: State's Exhibit 3 is offered in evidence.

Q. (State's Ex. 4 is shown to the witness.) Please state what State's Exhibit 4 is?
A. It is a statement showing the total number of tons of hard coal received from Duluth for the year ending June 30, 1899; the Minneapolis & St. Louis' proportion of the revenue, and the average rate per ton per mile; also the loss of revenue had the commissioners' rates been put in effect.
Q. Now, that is the actual number of tons of hard coal which the Minneapolis & St. Louis road received from the St. Paul & Duluth during the year ending June 30, 1899, is it?
A. I cannot say, exactly, from the St. Paul & Duluth; but from Duluth proper, all coal shipments.
Q. Oh, from Duluth proper—hauled by the Minneapolis & St. Louis road?
A. Yes, sir.
Q. From whom did you receive this statement?
A. From the general freight agent of the Minneapolis & St. Louis railroad.

Q. Mr. Hopkins?

A. Yes.

Q. And that is the statement which you have just pinned to Exhibit 4?

A. Yes, sir.

152 Q. The blank shows both the stations and the totals, and in these estimates that you have used, you have used the total coal shipments?

A. Yes, sir.

Q. In State's Exhibit 4, the first column indicated what?

A. The mileage from Minneapolis.

Q. The second column?

A. The tons carried.

Q. The third column?

A. The Minneapolis & St. Louis' proportion of rate per ton.

Q. Well, is that as it would be under the order of the commission?

A. Yes, sir.

Q. The fourth column?

A. Tons one mile.

Q. The fifth column?

A. The revenue derived from the tonnage—from the haul.

Q. And the sixth column?

A. The rate per ton per mile.

Q. That is, under the order of the railroad and warehouse commission?

A. Yes, sir.

Q. Then at the bottom of the statement appears the total number of tons hauled, does it?

A. Do you mean the totals as indicated, or the writing at the bottom?

Q. The writing at the bottom?

A. The total tons of hard coal received from Duluth for the year ending June 30, 1899, 2,583 tons. Minneapolis & St. Louis' proportion on the old rate, 2,583 tons, at $1.50, equals $3,874.50. Had the commissioners' rates been in effect for the same period, the Minneapolis & St. Louis' proportion would be $2,464.78; which would show a loss of revenue to the Minneapolis & St. Louis railroad, for the year, of $1,409.72.

Mr. O'BRIEN: We offer State's Exhibit 4 in evidence.

Q. When Mr. Hopkins was upon the stand he gave certain testimony as to the rate charges upon hard coal by the Northern

153 Pacific Railroad Company to Fergus Falls and Breckenridge and some other points in the northern part of the State.

A. Yes, sir.

Q. Since Mr. Hopkins testified, have those rates been changed?

A. Yes, I think they have.

Q. And by the voluntary action of the——

A. Of the Northern Pacific and the Great Northern.

Q. (State's Ex. 5 is shown to the witness.) Please state what State's Exhibit 5 is.

A. A statement showing mileage, rates, and rates per ton per mile on hard coal, from Duluth to stations on the Great Northern and Northern Pacific railways.

Mr. CLARKE: When was this rate put in force?

WITNESS: About the 18th of September, 1899.

Mr. CLARKE: Since the trial of this case was commenced?

WITNESS: Oh, yes, sir.

Q. The first column of State's Exhibit 5 shows what?

A. The first column shows the stations on the Great Northern which I have used in this case.

Q. And the second column?

A. Mileage from Duluth.

Q. From Duluth to these stations?

A. Yes, sir.

Q. The third column?

A. Shows the rates per ton.

Q. And the fourth column?

A. Shows the rate per ton per mile.

Q. Now, on the second half of the page, the first column shows what?

A. Stations on the Northern Pacific railway.

Q. And the second column?

A. The mileage from Duluth to those stations.

Q. Third column?

A. Rate per ton.

Q. And the fourth column?

A. Rate per ton per mile.

154 Q. And that is a statement of the rates that are now in force upon those roads to the points named?

A. Yes, sir.

Q. On hard coal in car-load lots?

A. Yes, sir.

Q. Those figures are taken from what?

A. From the Great Northern amendment to their tariff and also the N. P. tariff.

Q. (Special joint tariff N. P. R'y I. C. C. No. A–1281 shown to the witness.) This is the tariff that was filed in your office, is it?

A. Yes, sir, a copy of it.

Q. And that statement is a correct statement of those rates?

A. Yes, sir.

Mr. O'BRIEN: We offer State's Exhibit 5 in evidence.

Q. (State's Ex. 6 shown to the witness.) Please state what State's Exhibit 6 is.

A. It is a statement showing cost of operation, gross earnings and average cost per ton per mile for the year ending June 30, 1899, for the whole system, taken from figures furnished by the Minneapolis & St. Louis Railroad Company.

Q. State the figures you used in making up that statement.

A. I used the figures as shown in a statement which was handed to me by Mr. Nay.

Q. Did you use the figures given in the statement? Or did you make it up from the statements and figures given by him in his testimony at page 45?

A. Yes, sir.

Q. Taking the figures given by Mr. Nay in his testimony, the total operating expenses are how much?

A. $1,438,004.84.

Q. Taxes how much?

A. $84,700.25.

Q. Trackage and rentals?

A. $55,694.18.

155 Q. Making the total how much?

A. $1,578,399.27.

Q. And you have deducted from that what?

A. Trackage and rentals—$151,708.35.

Q. Making the total net cost how much?

A. $1,426,690.92.

Q. In the net cost have you included the interest paid upon the bonded indebtedness or any dividends upon stock?

A. No, sir.

Q. Those items have been omitted?

A. Yes, sir.

Q. Now, the gross earnings?

A. $2,500,004.36.

Q. And the gross freight earnings?

A. $1,860,257.57.

Q. Percentage of freight to gross earnings?

A. 74.41.

Q. And the proportion of cost of operation chargeable to freight?

A. 74.41 per cent. of $1,426,690.92, being $1,061,600.71.

Q. And the total tons one mile?

A. 156,379,613.

Q. And the average cost per ton per mile?

A. .6789.

Q. Now, have you accepted the items as given by Mr. Nay in his testimony at page 45, with the exception that you have not included the items of interest and dividends? Was it your intention to accept them? What I mean is, was that your idea—that you would accept the items, with the exception that you would omit interest and dividends?

A. Yes, sir.

Q. This is intended to be a statement made from the evidence of Mr. Nay?

A. Yes, sir; just eliminating those particular items.

Q. Just eliminating those particular items and then estimating the cost on your basis?

A. Yes, sir.

Q. Do the items as testified to by Mr. Nay on page 45 ex-

156 actly correspond with the statement furnished you by him, from which you made up State's Exhibit 1?

A. No, they do not agree.

Q. That is, in the statement furnished you, from which you made up State's Exhibit 1, the divisions were separate, were they?

A. Yes, sir.

Q. The total of the divisions stated separately did not agree with the totals as testified to by Mr. Nay at page 45?

A. No, sir.

Q. You have no means of knowing which of them is correct?

A. No, sir.

Q. If the figures stated at page 45 are correct, and if your basis of computation is correct (that is, that the interest and dividends should be eliminated), the average cost per ton per mile for carrying freight, on the whole system of the Minneapolis & St. Louis road, is .6789 cent per ton per mile?

A. Yes, sir.

Q. If the total of the divisions as given to you by Mr. Nay in the statement you have referred to, and as appears in your computation in State's Exhibit 1, is corrrct, and if your method of computation (that is, eliminating interest and dividends) is correct, the average cost per ton per mile for carrying freight upon the entire system of the Minneapolis & St. Louis road is .7094 cent?

A. Yes, sir.

The witness was not cross-examined.

State rests.

FRANK NAY was then recalled in behalf of defendant Minneapolis & St. Louis Railroad Company and testified as follows:

Examined by Mr. CLARKE:

Q. You have heard the testimony of the witness, Mr. Thomas Yapp?

A. Yes, sir.

157 Q. I will ask you to explain now, in your own way, the apparent differences between the computations made by Mr. Yapp and yourself.

A. There is an apparent discrepancy in the total operating expenses, total gross earnings and total freight earnings. That is to say, the sum of the six divisions added together aggregate more than the total operating expenses, gross earnings and freight earnings of the Minneapolis & St. Louis railroad. This is accounted for by the fact that, in the statement by divisions, the Pacific division (which was acquired by the Minneapolis & St. Louis Railroad Company on February 20, 1899,) is shown in full for the entire year; the earnings and expenses are shown for the entire year ending June 30, 1899——

Q. That is the fiscal year?

A. That is the fiscal year.

Q. The statement to which you have been referring is the one marked State's Exhibit 1?

A. Yes, sir.

Q. Now, go on.

A. ——while in the statement marked State's Exhibit 6, only the actual operating expenses and earnings of the Minneapolis & St. Louis railroad are included. The Minneapolis & St. Louis railroad did not include the Pacific division prior to February 20, nor the New Ulm division (or Southwestern division, as it is shown here) prior to March 1.

Q. Why?

A. Because before March 1st the road was a separate, independent corporation, operated entirely separate and distinct.

Q. It did not own these two roads—the Minneapolis, New Ulm & Southwestern and what is known as the Pacific division?

A. That is true—which was formerly the Wisconsin, Minnesota & Pacific railway. And for that reason there is an apparent discrepancy. The statement marked State's Exhibit 6 is based on
158 the earnings of the Minneapolis & St. Louis railroad as a corporation, while the statement marked Exhibit 1, in order to show correct averages, necessarily included the entire year, although the earnings for the greater portion of the year, on the Pacific division and New Ulm division, accrued to other companies. And the same is true of expenses.

Cross-examination.

By Mr. O'BRIEN:

Q. So the result is, Mr. Nay, that both of those statement are correct in themselves?

A. Yes, sir.

Q. And which statement would you say would most nearly show the average cost per ton per mile of carrying freight on the Minneapolis & St. Louis system as now constituted?

A. I should say that the statement covering the entire year; because conditions are different during the year. When business is extremely heavy, the cost of operation per ton per mile is less than when it is light, and in order to obtain a fair average it is necessary to take twelve months, so as to get all of the conditions of the year.

Q. Yes, but is it not also true that the cost of operating the Pacific division will be lessened because of the fact of its consolidation with the general system?

A. I do not think so.

This closed the testimony.

It is agreed that on March 3rd, 1899, the Minneapolis & St. Louis Railroad Company cancelled and withdrew from the joint tariff previously made with the St. Paul & Duluth Railroad Company and the Minneapolis, New Ulm & Southwestern Railroad Company for the transportation of hard coal from Duluth to the points
159 named in Schedule A, and this defendant has not at any time since said last-named date had any joint rate or agreement with said St. Paul & Duluth Railroad Company for the transportation of hard coal from Duluth to said points, and has no such joint

rate or agreement and has at all times declined and refused and now declines and refuses to enter into such joint tariff or agreement.

It is admitted that the railroad and warehouse commission made and promulgated the orders attached to the petition for the alternative writ of mandamus, and that publication thereof was made as stated in the petition.

Afterwards on October 23d, 1899, said cause was brought on before said court upon the petition of the railroad and warehouse commission of the State of Minnesota, together with the exhibits attached thereto, the alternative writ of mandamus issued on said petition, and the answers to said alternative writ of mandamus, and the evidence taken before the official stenographer of said court hereinbefore set forth, and the stipulations and agreements therein contained.

All of said parties duly appearing at said time, the following proceedings were had:

First. The relator moved that all the testimony be stricken out for the reason that no issue of fact was made by the pleadings, and there was no question of fact in controversy in this proceeding for the reason that the findings of the commission and the orders made by it not having been appealed from are conclusive; which motion was overruled and an exception noted.

Second. The relator moved to strike out the testimony of
160 Frank Nay on pages 14, 45 and 46 of the transcript of said evidence as to the cost of the Minneapolis & St. Louis railroad, and the amount of bonds and the amount of capital stock of said road, as being incompetent, irrelevant and immaterial and hearsay, and for the reason that the same furnishes no basis for computing rates; which said motion was denied and exception noted.

Third. To strike out the testimony of Ira B. Mills on pages 60, 61, 62, 99 and 100, of said transcript, upon the ground that the same was incompetent, irrelevant and immaterial; which said motion was denied and exception noted.

And thereupon said cause being argued by the respective counsel the same was fully submitted to the court.

On Monday, January 29, 1900, said court made and filed the following findings of fact and conclusions of law:

Findings of Fact.

Each of the facts stated and alleged in said petition and in the exhibits attached thereto, is true.

The joint through rates fixed by said commission as shown by Exhibit "B," attached to said petition, are not unreasonable or confiscatory, nor is the proportion of said joint rates allowed to either defendant under the order of said commission unreasonable.

Save as aforesaid, the allegations of fact contained in the answers of defendant are not proven.

Conclusions of Law.

The several acts and orders of said commission set forth in
161 said petition and said exhibits are valid and binding upon the defendants; and the rates so fixed by said commission *prima facie* reasonable.

The defendants have not proved that such rates are unreasonable.

The plaintiff is entitled to a writ of mandamus as prayed for in said petition.

It is therefore ordered and directed: that the clerk of this court forthwith issue a peremptory writ of mandamus, directed to the defendant railroad companies and each of them, commanding and directing that they and each of them forthwith adopt and publish and keep for public inspection, as provided by law, as the joint through rates to be charged by them as freight for the hauling of hard coal in car-load lots from the city of Duluth, Minnesota, to the points hereinafter named, the following rates and charges, to wit:

	Rate per ton.
Hopkins	$1.32
Minnetonka	1.35
Deephaven	1.38
Excelsior	1.40
Waconia	1.51
Young America	1.56
Norwood	1.57
Hamburg	1.62
Green Isle	1.63
Arlington	1.68
Gaylord	1.75
Winthrop	1.80
Lafayette	1.86
Klossner	1.91
New Ulm	1.95
Gibbon	1.87
162 Fairfax	1.96
Franklin	2.01
Morton	2.05
Redwood	2.11
Delhi	2.15
Belview	2.21
Echo	2.23
Wood Lake	2.29
Hanley Falls	2.33
Hazel Run	2.38
Clarkfield	2.42
Boyd	2.48

and that they make and file with the railroad and warehouse commission copies of said schedules, rates and fares and charges, and that from and after the receipt of this writ they receive, haul and

transport hard coal in car-load lots from the city of Duluth to the points and stations above named at and for the rate, fare and charge herein set forth; and that for the carrying of such freight no higher or greater rate shall be asked, demanded or received by either of them; and that said respective amounts shall be charged and received as the joint through rate to be charged for such service, and shall be divided between them, the said defendant companies, as Exhibit "C," attached to the petition herein, provides and orders, and that they comply in all other respects with the said orders of said railroad and warehouse commission, copies of which are attached to the petition herein.

GEORGE L. BUNN,
District Judge.

January 27, 1900.

163 *Memorandum.*

I have carefully studied the evidence and the exhaustive briefs of counsel and believe that the conclusions I have reached, as noted below, are right.

(1.) The contention of the plaintiff that the action of the commission is final and conclusive, when no appeal is taken, is unsound. As I ruled on the hearing, the rates fixed by the commission are merely *prima facie* reasonable, and the defendants may offer testimony and prove, if they are able to, that the rates are unreasonable and confiscatory.

(2.) The general power of the State to control and regulate railroad rates is firmly established. This power being conceded, I think that the law giving the commission power to fix a joint rate for connecting carriers, and to apportion this rate between them in case they fail to agree upon a division, is within and a legitimate exercise of the general power, and that the law is therefore constitutional. The Jacobson case, in my opinion, is decisive on this question in this State, and, independently of that authority, I believe the law valid.

(3.) We have, then, this case: The commission had the power to establish and fix the joint rate to be received by the defendants for the transportation of coal in car-load lots from Duluth to the points named in the schedule. After a hearing, it did so. The rates thus established are *prima facie* reasonable, and the burden of proof is upon the railroad companies to prove that they are unreasonable and confiscatory. Unless the defendants have sustained this burden, and shown by a fair preponderance of the evidence that the rates
164 so fixed are unreasonable, the relief asked in the petition should be granted and a peremptory writ of mandamus issued.

I am of the opinion that the defendants have wholly failed to prove that the rates fixed are unreasonable. While it may be the fact that the rates fixed are less than the cost of transportation as claimed by the defendants, the evidence does not show it. It is perhaps proved that the cost of carrying all freight is greater than the revenue the Minneapolis & St. Louis Company would derive if the

rate fixed by the commission for "coal in car-load lots" was to be applied to all freight. But "coal in car-load lots" is a comparatively insignificant item in the total freight carried by the company, and it must be conceded that the cost of transporting coal in car-load lots per ton per mile is considerably less than the average cost for all freight. It is not only shown by the testimony what the cost per ton per mile for carrying hard coal in car-load lots is, but there is no testimony in the record that enablas me to make even a fair guess as to what it is, or as to whether it is less or greater than the rate per ton per mile allowed under the rates fixed by the commission. In other words, proof of the cost per ton per mile of transporting all freight furnishes no data from which I am able to estimate the cost per ton per mile of transporting "hard coal in car-load lots." This cost being unknown, it is impossible to say that the rates fixed by the commission will not yield the company a fair revenue.

BUNN, *J.*

The above and foregoing case and bill of exceptions having been presented to me, the court who tried the same, within the time for settlement and allowance thereof, and having been found con-
165 formable to the facts, and having been by me found to be true, and as containing all the evidence and proceedings herein, the same is hereby settled and allowed as and for the settled case and bill of exceptions in said case.

GEORGE L. BUNN,
Judge of District Court.

Dated February 10th, 1900.

(Title of Cause.)

To W. B. Douglas, attorney general, and C. D. & Thos. D. O'Brien, attorneys for complainant:

Please take notice that the settled case and bill of exceptions heretofore proposed by the above-named defendant, which has been served upon you, together with such amendments as may be served by you, will be presented to the Hon. George L. Bunn, one of the judges of said court, at the court-house in the city of St. Paul, Ramsey county, Minnesota, on the 10th day of February, A. D. 1900, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for the allowance and settlement of said proposed case and bill of exceptions, and for the certificate and signature of said judge thereto.

You will also please take notice that then and there and immediately after the allowance of said settled case and bill of exceptions and the signature of the judge thereto, the defendant will, upon the files, pleadings, records and all the proceedings had in said action, and upon the settled case herein, move the court to order and direct a new trial herein upon the following grounds:

166 1st. That the decision is not justified by the evidence; is not in accord with the evidence, and is against the great weight of the evidence.

2d. That the evidence shows conclusively that the rate or tariff fixed by the board of railroad and warehouse commissioners for the

transportation of hard coal to the points named in the petition for the alternative writ of mandamus is unreasonably low and does not afford this defendant, The Minneapolis & St. Louis Railroad Company, reasonable compensation for the service rendered.

3d. Because the decision is contrary to law.

4th. Because it appears that the acts of the State legislature of the State of Minnesota, pursuant to which the order of the board of railroad and warehouse commissioners was made, is in conflict with and violative of the provisions of the fourteenth amendment to the Constitution of the United States.

5th. Because the court committed error in denying defendant's motion for judgment made and filed before said trial was had.

6th. Because of errors occurring at the trial and duly excepted to by this defendant.

ALBERT E. CLARKE,
Attorney for the Minneapolis & St. Louis Railroad Company.

Dated February 5th, 1900.

(Title of Cause.)

Now comes The Minneapolis & St. Louis Railroad Company, one of the respondents in the above-entitled action, and moves the
167 court to set aside the decision heretofore rendered in this action and grant a new trial herein on the following grounds:

1. That the decision is not justified by the evidence; is not in accord with the evidence, and is against the great weight of the evidence.

2. That the evidence shows conclusively that the rate or tariff fixed by the board of railroad and warehouse commissioners for the transportation of hard coal to the points named in the petition for the alternative writ of mandamus is unreasonably low and does not afford this defendant, The Minneapolis & St. Louis Railroad Company, reasonable compensation for the service rendered.

3. Because the decision is contrary to law.

4. Because it appears that the acts of the State legislature of the State of Minnesota, pursuant to which the order of the board of railroad and warehouse commissioners was made, is in conflict with and violative of the provisions of the fourteenth amendment to the Constitution of the United States.

5. Because the court committed error in denying defendant's motion for judgment made and filed before said trial was had.

6. Because of errors occurring at the trial and duly excepted to by this defendant.

ALBERT E. CLARKE,
Attorney for the Minneapolis & St. Louis Railroad Company.

Dated February 10th, 1900.

(Title of Cause.)

168 The motion of the respondent, The Minneapolis & St. Louis Railway Company, in the above-entitled action, came

on duly to be heard before this court at special term February 10th, 1900. Having duly considered the same, it is

Ordered, that said motion be, and the same is hereby denied.

GEORGE L. BUNN,
District Judge.

February 10, 1900.

(Title of Cause.)

This action having been duly tried by the above-entitled court and Honrable George L. Bunn, one of the judges of said court, having duly filed findings of fact and conclusions of law from which it appears that the plaintiff is entitled to the relief demanded in said complaint and to the directions and mandates hereinafter recited:

Now, therefore, pursuant thereto and on motion of W. B. Douglas, Esq. attorney general of the State of Minnesota, and Messrs. C. D. and Thos. D. O'Brien, it is

Ordered, adjudged and decreed, that the defendants and each of them forthwith adopt and publish and keep for public inspection as provided by law as the joint through rate to be charged by them as freight for the hauling of hard coal in car-load lots from the city of Duluth, Minnesota, to the points hereinafter named, the following rates and charges, to wit:

		Rate per ton.
	Hopkins	$1.32
	Minnetonka	1.35
169	Deephaven	1.38
	Excelsior	1.40
	Waconia	1.51
	Young America	1.56
	Norwood	1.57
	Hamburg	1.62
	Green Isle	1.63
	Arlington	1.68
	Gaylord	1.75
	Winthrop	1.80
	Lafayette	1.86
	Klossner	1.91
	New Ulm	1.95
	Gibbon	1.87
	Fairfax	1.96
	Franklin	2.01
	Morton	2.05
	Redwood	2.11
	Delhi	2.15
	Belview	2.21
	Echo	2.23
	Wood Lake	2.29
	Hanley Falls	2.33
	Hazel Run	2.38
	Clarkfield	2.42
	Boyd	2.48

and that they and each of them make and file with the railroad and warehouse commission copies of said schedules, rates, fares and charges.

That of the said freights so to be received by said defendants for said services as aforesaid, the defendant, The St. Paul & Duluth Railroad Company, shall have and retain as its compensation for
170 its services in the carriage of said coal over its line of road and the delivery of the same to the Minneapolis & St. Louis Railroad Company, the sum of one dollar ($1.00) per ton; and the said defendant, The Minneapolis & St. Louis Railroad Company shall receive the balance of the total amount herein allowed, as its compensation for the receiving of said coal from said St. Paul & Duluth Railroad Company and the carriage of the same upon its line of road.

Ordered, further, that a peremptory writ of mandamus directed to said defendants and each of them issue out of and under the seal of this court, ordering and directing said defendants and each of them to haul and transport hard coal in car-load lots from the city of Duluth to the points and stations above named at and for the rate, fare and charge hereinbefore set forth; and that for the carrying of such freight no higher or greater rate shall be asked, demanded or received by either of them; and that said respective amounts shall be charged and received as the joint through rate to be charged for such service, and shall be divided between them, the said defendant companies, as hereinbefore provided, and that said defendant railroad companies comply in all other respects with those certain orders of said railroad and warehouse commission, copies of which are attached to the petition filed with the court in this action, marked respectively Exhibit B and Exhibit C.

Signed this 15th day of February, A. D. 1900.

EDWARD G. ROGERS, *Clerk.*

(Seal of Dist. Ct.)

171 (Title of Cause.)

Notice of Appeal.

To W. B. Douglas, attorney general, and C. D. & Thos. D. O'Brien, attorneys for the above-named plaintiff, and to Edward G. Rogers, clerk of said district court:

Please take notice, that the above-named defendant, The Minneapolis & St. Louis Railroad Company, appeals to the supreme court of the State of Minnesota, from that certain order of the said district court entered herein, on the tenth day of February, A. D. 1900, denying the motion of said defendant for a new trial and from the judgment entered herein on the 15th day of February, 1900, in favor of said plaintiff and against said defendant, by which it is ordered and adjudged that a peremptory writ of mandamus issue out of and under the seal of said district court, ordering and directing the defendants to transport hard coal in car-load lots from the city of Du-

luth to certain points and stations named in said judgment at and for the rates and tariff therein specified, and from the whole thereof.

Dated this 16th day of February, A. D. 1900.

ALBERT E. CLARKE,
Attorney for Defendant, The Minneapolis & St. Louis Railroad Co.

Service duly admitted.

Bond on appeal approved, served and filed.

172 (Title of Cause.)

Stipulation.

It is hereby stipulated that the original exhibits offered and received in evidence on the trial of this case in the district court shall be transmitted and returned to the supreme court as part of the return on appeal. That such original exhibits may be used by either party upon the hearing of said appeal in the supreme court. That neither party shall be required to incorporate copies of such exhibits into the paper book. Either party may, however, incorporate or print any part of said exhibits in the brief filed in the supreme court.

C. D. AND THOS. D. O'BRIEN,
Attorneys for Relator,
ALBERT E. CLARKE,
Att'y for the Minneapolis & St. Louis Railroad Co.

Dated February 13, 1900.

(Here follows blue print marked p. 173.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

Statement Showing Cost of Operation, Gross Earnings, and Average Cost of Operation per Ton per Mile for Year Ending June 30th, 1899, Taken from Figures Furnished by the Minneapolis and St. Louis Railroad Company.

	St. Paul div'n.	Western div'n.	Pacific division.	New Ulm div'n.	Albert Lea div'n.	Southern division.	Totals.
Operating expenses	$92,650.53	$219,266.13	$153,728.99	$29,384.87	$708,395.33	$350,882.85	$1,554,308.70
Taxes paid	1,813.23	19,120.82	10,318.75	399.77	38,448.30	22,043.14	92,144.01
Rentals paid	54,254.18	" " "	" " "	" "	1,440.00	" " "	55,694.18
Total operating expenses	$148,717.94	$238,386.95	$164,047.74	$29,784.64	$748,283.63	$372,925.99	$1,702,146.89
Deduct:							
Trackage and rentals received	13,099.80	" " "	" " "	" " "	135,488.55	3,120.00	151,708.35
Net cost	$135,618.14	$238,386.95	$164,047.74	$29,784.64	$612,795.08	$369,805.99	$1,550,438.54
Gross earnings	$57,351.42	$603,554.72	$264,921.44	$33,884.10	$1,219,163.70	$532,469.51	$2,711,344.89
Freight earnings	41,310.22	475,771.82	203,006.92	21,715.19	906,939.68	376,755.98	2,025,499.82
Per cent. of freight to gross earnings	72.03 %	78.83 %	76.63 %	64.09 %	74.39 %	70.76 %	Avg. 74.70 %
Prop'n of cost of operation chargeable to freight	97,685.75	187,920.43	125,709.78	19,088.97	455,858.26	261,674.72	1,158,177.59
Total tons one mile	1,941,846	26,901,460	9,414,681	675,831	89,524,755	34,797,490	163,256,063
Average cost per ton per mile	ct. 5.031	ct. .6986	ct. 1.335	ct. 2.825	ct. .5092	ct. .7520	ct. .7094

	Years	1890.	1891.	1892.	1893.	1894.	1895.	1896.	1897.	1898.	1899.
		ct.	ct.	ct.	ct.	ct.	ct.	ct.	ct.	ct.	ct.
Estimated cost per ton per mile in Minnesota		.684	.671	.695	.680	.....	.....	not shown.		.....	....
" " " " " " whole line		.727	.743	.736	.709	.....	.....	not shown.		.....	.....
Average receipts " " " " in Minnesota		1.338	1.398	1.492	1.313	1.233	1.338	1.315	1.303	1.194	1.220
" " " " " " whole line		1.430	1.406	1.486	1.330	1.267	1.332	1.328	1.283	1.171	1.190

New Ulm rate case, Sept'r 21st, 1899.

175 Ex. 2.

Statement Showing Cost of Operation, Gross Earnings, and Average Cost of Operation per Ton per Mile for Year Ending June 30th, 1899, Taken from Figures Furnished by the Minneapolis and St. Louis R. R. Company.

	Western division.	Pacific division.	New Ulm division.	Totals.
Operating expenses	$219,266.13	$153,728.99	$29,384.87	$402,379.99
Taxes paid	19,120.82	10,318.75	399.77	29,839.34
Rentals paid				
Total operating expenses	$238,386.95	$164,047.74	$29,784.64	$432,219.33
Gross earnings	$603,554.72	$284,921.44	$33,884.10	$902,360.26
Freight earnings	475,771.83	203,006.92	21,715.19	700,493.94
Per cent. of freight to gross earnings	78.83 %	76.63 %	64.09 %	Avg. 77.63 %
Prop'n of cost of operation chargeable to freight	$187,920.43	$125,709.78	$19,088.97	$335,531.86
Total tons, one mile	26,901,460	9,414,681	675,831	36,991,972
Average cost per ton per mile	ct. .6986	ct. 1.335	ct. 2.825	ct. .907

176 Pl'ff's Ex. 3.

Statement Showing Mileage, Rates, and Rates per Ton per Mile, Based on Rates Made by R. R. & W. H. Commission in New Ulm Coal-rate Case.

From Duluth to—	Mileage from— Duluth.	Mileage from— M'p'lis.	Rates per ton, 2,000 lbs., from Duluth. Old rate.	Rates per ton, 2,000 lbs., from Duluth. Comm'n rate.	M. & St. L. prop'n. Rate per ton.	M. & St. L. prop'n. Rate per ton per mile.
Hopkins	171	9	$1.75	$1.32	$ .32	$3.556
Minnetonka, M.	174	12	2.00	1.35	.35	2.917
Deephaven	177	15	2.00	1.38	.38	2.533
Excelsior	181	19	2.10	1.40	.40	2.105
Waconia	194	32	2.35	1.51	.51	1.594
Young America	201	39	2.45	1.56	.56	1.436
Norwood	202	40	2.50	1.57	.57	1.425
Hamburg	206	44	2.50	1.62	.62	1.410
Green Isle	210	48	2.50	1.63	.63	1.313
Arlington	217	55	2.50	1.68	.68	1.236
Gaylord	226	63	2.50	1.75	.75	1.190
Winthrop	232	70	2.50	1.80	.80	1.143
Lafayette	239	77	2.50	1.86	.86	1.117
Klossner	246	83	2.50	1.91	.91	1.096
New Ulm	251	89	2.50	1.95	.95	1.067
Gibbon	240	78	2.50	1.87	.87	1.115
Fairfax	249	87	2.50	1.96	.96	1.105
Franklin	257	95	2.50	2.01	1.01	1.063
Morton	263	101	2.50	2.05	1.05	1.040
Redwood	269	107	2.50	2.11	1.11	1.037
Delhi	275	113	2.50	2.15	1.15	1.018
Belview	280	118	2.50	2.21	1.21	1.025
Echo	285	123	2.50	2.23	1.23	1.000
Wood Lake	292	130	2.50	2.29	1.29	.992
Hanley Falls	297	135	2.50	2.33	1.33	.985
Hazel Run	303	141	2.50	2.38	1.38	.979
Clarkfield	308	146	2.50	2.42	1.42	.980
Boyd	316	153	2.50	2.48	1.48	.967
		2,222			24.78	

M. & St. L. average rate per ton per mile, ct., 1.115.

177 EX. 4.

Statement Showing Total Number of Tons of Hard Coal Received from Duluth for Year Ending June 30th, 1899—M. & St. L. R. R. Proportion of Revenue and Average Rate per Ton per Mile; also Loss of Revenue Had Commissioners' Rates Been in Effect.

From Duluth to—	Miles from M'plis.	Tons carried.	M. & St. L. prop'n of rate per ton.	Tons one mile.	Revenue.	Rate per ton per mile.
Green Isle	48	20	$ .63	960	$12.60	ct. 1.312
Gaylord	63	99	.75	6,237	74.25	1.190
Winthrop	70	642	.80	44,940	513.60	1.143
Lafayette	77	15	.86	1,155	12.90	1.117
New Ulm	89	1,154	.95	102,706	1,096.30	1.067
Gibbon	78	27.5	.87	2,145	23.93	1.115
Fairfax	87	218	.96	18,966	209.28	1.103
Franklin	95	31	1.01	2,945	31.31	1.063
Morton	101	71	1.05	7,171	74.55	1.040
Redwood	107	15	1.11	1,605	16.65	1.037
Echo	125	51	1.23	6,273	62.73	1.000
Wood Lake	130	47.5	1.29	6,175	61.28	.993
Hazel Run	141	18	1.38	2,538	24.84	.979
Clarkfield	146	116	1.42	16,936	164.72	.973
Boyd	153	58	1.48	8,874	85.84	.967
Totals		2,583		229,626	$2,464.78	ct. 1.073 av.

Total tons of hard coal received from Duluth for year ending June 30th, 1899, 2,583 tons.

M. & St. L. R. R proportion on old rate, 2,583 tons, @ 1.50 ..... $3,874.50
Had commissioners' rates been in effect for same period, M. & St. L. R. R. proportion would be 2,464.78

Loss of revenue to M. & St. L. R. R. for year $1,409.72

178 STATE'S EX. 5.

Statement Showing Mileage, Rates, and Rates per Ton per Mile on Hard Coal from Duluth to Stations on Great Northern and Northern Pacific R'ys.

Great Northern R'y.				Northern Pacific R'y.			
To—	Miles.	Rate per ton.	Rate per ton per mile.	To—	Miles.	Rate per ton.	Rate per ton per mile.
Nickerson	33	1.25	3.787	Sawyer	38	.80	2.105
Kerrick	40	"	3.125	Corona	44	.90	2.045
Bruno	48	"	2.604	Cromwell	50	.95	1.900
Partridge	56	"	2.232	Wright	56	1.00	1.786
Sandstone	63	"	1.984	Tomahawk	62	1.10	1.774
Brook Park	80	"	1.562	McGregor	71	1.20	1.690
Mora	91	"	1.374	Kimberley	81	1.20	1.481
Tosca	106	"	1.179	Rossburg	85	1.25	1.471
Milaca	111	"	1.126	Aitkin	91	1.25	1.374
Bridgman	114	1.60	1.403	Cedar Lake	96	1.30	1.354
Oak Park	120	"	1.333	Deerwood	101	1.40	1.386
Foley	125	"	1.280	Jonesville	111	1.45	1.306
St. Cloud	139	"	1.151	Brainerd	118	1.50	1.271
Collegeville	149	2.00	1.342	Baxter	123	1.55	1.260
Avon	155	"	1.290	Sylvan Lake	128	1.60	1.250
Albany	161	"	1.242	Pillager	132	1.65	1.250
Freeport	167	"	1.197	Motley	140	1.75	1.250
Melrose	173	"	1.156	Staples	148	1.85	1.250
Sauk Centre	181	"	1.104	Downer Lake	150	1.85	1.233
West Union	189	"	1.058	Aldrich	155	1.90	1.226
Osakis	195	"	1.026	Verndale	159	1.95	1.226
Nelson	201	"	.995	Wadena	165	2.00	1.212
Alexandria	206	"	.971	New York Mills	178	2.15	1.208
Brandon	219	"	.913	Perham	189	2.25	1.190
Evansville	224	2.05	.915	Lucel	194	"	1.160
Melby	228	2.10	.921	Frazee	200	"	1.125

Statement Showing Mileage, &c.—Continued.

Great Northern R'y.				Northern Pacific R'y.			
To—	Miles.	Rate per ton.	Rate per ton per mile.	To—	Miles.	Rate per ton.	Rate per ton per mile.
Ashby	233	2.15	.923	McHugh	205	2.25	1.098
Parkdale	247	2.25	.911	Detroit	210	"	1.071
Fergus Falls	252	"	.893	Audobon	217	"	1.037
Carlisle	260	"	.865	Lake Park	222	"	1.014
Rothsay	268	"	.839	Winnipeg Jct.	230	"	.978
Lawndale	275	"	.818	Hitterdal	236	"	.953
Barnesville	282	"	.798	Syre	250	"	.900
Downer	290	"	.776	Gary	264	"	.852
Glyndon	301	"	.750	Fertile	276	"	.815
Averill	306	"	.735	Tilden	287	"	.784
Felton	314	"	.717	Red Lake Falls	310	"	.726
	6,601	68.45	1.037 av.		5,772	65.05	1.127 avg.

179 Statement showing cost of operation, gross earnings, and average cost per ton per mile for year ending June 30, 1899, for the whole system, taken from figures furnished by the M. & St. L. R'y.

Operating expenses	$1,438,004.84
Taxes	84,700.25
Trackage and rentals	55,694.18
	1,578,399.27
Deduct trackage and rentals	151,708.35
Net cost	1,426,690.92
Gross earnings	2,500,004.36
Freight "	1,860,257.57
Per cent. of freight to gross earnings	74.41
Proportion of cost of operation chargeable to freight, 74.41 % of $1,426,690.92	1,061,600.71
Total tons one mile	156,379,613
Average cost per ton per mile	.6789

State's Ex. 6.

180 12111.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

STATE OF MINN. *ex Rel.* R. R. & WAREHOUSE Commission, Respondent,
vs.
MPLS. & ST. LOUIS R. R. CO. ET AL., Defendants; Mpls. & St. Louis R. R. Co., Appellant.
No. 207. Syllabus.

1. On the hearing in district court upon an application for a writ of mandamus to compel a common carrier to obey and comply with an order fixing a tariff of rates made by the State railroad and warehouse com. the carrier is entitled to an examination of matters of fact in which evidence *de novo* may be taken. Under the provisions of G. S. 1894, sec. 393, such an order is not conclusive as to the reasonableness of the tariff in the absence of an appeal therefrom.
2. Held, following Jacobson *v.* R'y Co., 71 Minn., 519, that such part of L. 1895, ch. 91, as authorizes said commission to establish by order joint through rates for the transportation of freight over any two or more connecting lines of railway within this State and to compel obedience thereto does not violate any of the constitutional provisions, Federal or State.
3. Held, that when estimating the cost of operating a railway per ton of freight per mile of carriage for the purpose of determining the reasonableness of a tariff of rates fixed by the commission it is error to take into consideration an amount of the earnings which has been appropriated and paid out as dividends on stock shares of such railway.
4. When considering the reasonableness of such rates the commission and the courts are justified in taking into consideration what is known as a "commercial necessity," namely, the application of principles when fixing rates which are forced upon common carriers by various conditions and circum-
181 stances and are in common practice among them, a business policy which actuates and influences the carriers themselves to disregard a rule of strict comparison and strict equality as between bulk or weight or value as well as distance of carriage.
5. G. S. 1894, sec. 381, subd. C; *id.*, sec. 392, subd. A, and L. 1895, ch. 91, sec. 3, subd. C, provides that the tariff of rates made by the commission shall be taken by the courts as *prima facie* evidence that such tariff is equal and reasonable, the burden being on the carrier to show to the contrary.

Held, on the proofs in this action, whether the rule laid down in Steenerson *v.* G. N. R'y Co., 69 Minn., 353, as a basis for ascertaining what are reasonable rates be applied, or the rule of greater value to defendant carrier, announced in Smyth *v.*

Ames, 169 U. S., 466, that defendant did not rebut and overcome the *prima facie* character of the tariff in question, which was upon coal in car-load lots.

6. Courts cannot assume that the cost of reproduction of a line of railway or that the present as compared with the original cost of construction is the amount of stock and bonds outstanding or that it is what the road has cost up the time of the trial.

182 12111.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

STATE OF MINN. *ex Rel.* R. R. & WAREHOUSE Commission, Respondent,
vs.
MINN. & ST. LOUIS R. R. CO. ET AL, Def'ts; Minn. & St. Louis R. R. Co., Appellant.
} No. 207. Opinion.

The St. Paul & Duluth Railroad Company operates a line of railroad from Duluth, Minnesota, to the cities of St. Paul and Minneapolis, Minnesota. The Minneapolis & St. Louis railway operates a line of railroad from the cities of St. Paul and Minneapolis to the various points in the State of Minnesota designated in the order of the railroad and warehouse commission which is under consideration in this case. Both of the defendants are fully equipped to conduct the business of common carriers of freight, have complete track connection and transfer facilities at the cities of St. Paul and Minneapolis, and for a long time have been engaged in transporting hard coal in car-load lots without change of cars from Duluth to the points upon the line of the Minneapolis and St. Louis road for a joint through rate, which had been established by the mutual agreement of the defendants and which had been divided between the defendants according to that agreement.

On the 22nd day of September, 1898, the railroad and warehouse commission of this State under a resolution entered upon the investigation of the reasonableness of said joint rate for hard coal in car-load lots so established by the defendant. The defendants
183 duly appeared and took part in the investigation, and on the 19th day of January, 1899, the railroad and warehouse commission made an order establishing a joint through rate for the commodity in question, known herein as Schedule B. After the due publication and service of the order the defendants failed to agree upon a division of the rate ordered by the commission, and the Minneapolis & St. Louis Railroad Company withdrew all tariffs on hard coal in car-load lots, which had been established under the agreement with the Duluth road. The railroad and warehouse commission, having cited the defendants to appear, made the order of April 8th, 1899, directing how the joint through rate should be divided between the defendants. The orders of the commission were duly

promulgated and published as provided by law. No appeal was taken therefrom.

Neither of the defendants filed or posted schedules of the new tariff, and the defendant The Minneapolis and St. Louis Railroad Company refused to receive or transport coal under the order of the commission, and this proceeding was commenced in the district court of Ramsey county to compel the defendants to comply with such orders.

After a trial, judgment was entered confirming the orders of the railroad and warehouse commission and commanding the issuance of a peremptory writ, as demanded in the petition filed in this proceeding.

This appeal is from a judgment entered in accordance and also from an order previously made denying a motion for a new trial made by defendant R'y Co.

1. We are of opinion that the contention of counsel for the relator board that the order complained of is conclusive in the absence of appeal therefrom is without merit. G. S. 1894, sec. 393, provides for an appeal from the commission to the district court, and that

"upon such appeal and upon the hearing of any application
184 by the commission or by the attorney general for the enforcement of any order made by the commission, the district court shall have jurisdiction to, and it shall examine the whole matter in controversy, *including matters of fact* as well as questions of law, and to affirm, modify, or reverse such order in whole or in part as justice may require," and that "the remedies herein provided for shall be in addition to all existing legal remedies." Evidently more than one remedy is contemplated. No effect would be given to the language we have italicised if it was not intended that in a proceeding like this to enforce an order made by the commission there should be just such a trial as there would be if an appeal had been taken from the order. On such appeal the court will examine matters of fact to ascertain whether there is any evidence reasonably tending to support the disputed findings of fact, taking evidence *de novo*. Steenerson *v.* R'y Co., 69 Minn., 353. It may not have been necessary, in view of the amendment G. L. 1891, chap. 106, requiring that notice of a hearing should be given by the commission, that any hearing in these courts should be had on the merits except on appeal, but that is not the question. It is simply one of statutory construction.

It was not incumbent upon the defendant to appeal from the order that it might have an investigation on the facts.

2. As stated by counsel for the railway company, the substantial questions involved are two. One is the validity of the law pursuant to which the order of the commission was made and the judgment appealed from entered, and the other is the validity and correctness of the action of the court below whereby it affirmed and sustained the said order. The latter question is a very serious one under any circumstances and will continue so to be until we have more definite utterances on the subject from the Supreme Court of the U. S.,

the tribunal in which the constitutional questions involved must finally be determined.

185 3. As to the first of those questions, a joint rate for car-load lots of coal, both hard and soft, had been agreed upon between the railway lines affected by the order and had been put in effect some time prior to any action on the part of the commission and earnings thereunder were divided between the carriers participating in the transportation. The tariff rate for coal per ton from Duluth to the first station south of Minneapolis (Hopkins), about nine miles, and on defendant's line of road, was $1.75. To Norwood, a trifle over 40 miles from Minneapolis, it was $2.50. It was the same to the stations southerly, 21 in number, the one most southerly being Boyd, 152 miles distant from Minneapolis or about 112 miles beyond Norwood—that is, the rate agreed upon was the same per ton in car-load lots whether it was transported to a station forty miles south of Minneapolis or to another station 152 miles distant; and of this agreed rate it was stipulated by the railway companies that the carrier from Duluth to Minneapolis should receive $1.00 per ton, distance 162 miles. We refer to these figures for the purpose of calling attention to what is evidently a fact that the defendant was either carrying coal to Boyd at a loss or was collecting too much tariff per ton on the same article transported to Norwood. We presume that these regulations as to rates were compelled by what one of defendant's witnesses called "commercial conditions" which made them necessary—not unlike those conditions referred to by the writer in a concurring opinion in Steenerson *v.* G. N. R'y Co., *supra*, which permit or compel a discrimination between places and commodities where railway officials make schedules of rates for the transportation of passengers and merchandize and countenanced by the Interstate Commerce Commission, as therein noted. It has been held by the highest authority in the land, under a provision found in the interstate-commerce act, that when connecting car-

186 riers voluntarily enter into joint traffic arrangements the joint rate must be reasonable and may be made so. Cinn. R'y Co. *v.* Com'n, 162 U. S., 184. But independently of a previously existing joint arrangement we see no reason why under the amendatory act, G. L. 1895, chap. 91, the commission cannot lawfully compel a joint arrangement in a case like this. The evidence shows that the location of the Duluth road and the Minneapolis & St. Louis road, their track facilities, equipment, etc., are such that by operating together under joint traffic agreements the cost of the service can be greatly lessened. The public has at least a right to share in the benefits of this condition. If it is judicious so to do and of public benefit to have joint traffic arrangements in any given case, why should not the public be permitted to compel that such arrangements be made?

"If the State is to have any voice, therefore, in the establishment of reasonable rates, it must have a voice in some degree and some manner in the business of the carrier. Where a single carrier is being dealt with this can be accomplished by determining what the operating expenses ought reasonably to be, the reasonable value of the capital invested, what return under all the circumstances of

the case would be fair, and then by adjusting the rate an economical management is secured; but in a case like the one at bar where each may plead its inability to make the necessary agreement with the other the State must have the power to arbitrate between them and, within proper limitations, compel the acceptance of its award."

If the State is powerless to decide as between carriers we have, as said by counsel for the commission, the following absurdity, namely:

"A. The State may regulate rates.

B. The rate must be reasonable.

C. It must afford the carrier compensation over and above operating expenses.

D. The method of operating and consequent expenses is beyond the State control."

187 But this question has heretofore been considered and disposed of in this State adversely to defendant's contention in Jacobson *v.* R'y Co., 71 Minn., 519, now in the U. S. Supreme Court on a writ of error. It was there held that the act of 1895 did not under the facts of that case contravene the Federal or the State constitution when conferring upon the commission the power to compel the transfer and interchange of loaded cars and the making of joint rates for through shipments where the haul was in part on one and in part on the other of two connecting roads. There are no facts here which take this case out of the operation of the rule thus established, and we must abide by it as perfectly legitimate until the Federal court declares that an error has been committed.

We hold, therefore, that chapter 91, Laws 1895, violates no provision of the State or Federal Constitution, and under it the railroad and warehouse commission of this State has the power to compel the enforcement of joint through rates between points within this State by the connecting carriers now before us.

4. As to the second and most perplexing of these questions. By G. S. 1894, sec. 381, subd. C; *id.*, sec. 392, subd. A, and L. 1895, ch. 91, sec. 3, subd. C, it is enacted and provided that the tariff of rates, fares, charges, or classifications made by the commission shall be deemed and taken in all courts of this State as *prima facie* evidence that such tariff is equal and reasonable, the burden being on the railway company to show that the rates as fixed are unequal or unreasonable. This burden was on the defendant carrier when it resisted the enforcement of the order in the court below and continued at every stage of the trial, and in respect to all matters affecting its earning capacity, its fixed charges, its operating expenses, its sources of revenue, and the value of the property itself, and the question is, Was the *prima facie* character of the order of the commission swept away and overcome by the evidence, and was it shown by such

188 evidence that the rates established were so unjust and unreasonable as to be confiscatory in their nature, so that when the order was enforced it operated to destroy defendant's rights of property? Of course, this could be done by fixing a fair and reasonable joint rate for the two companies interested for the transportation of coal to points on defendant's road south of Minneapolis and then awarding too large a proportion or percentage of the joint

earnings to the Duluth and Minneapolis carrier, and this is what is complained of, for the commission gave to the carrier last mentioned $1.00 per ton, exactly what it had received under the voluntary traffic arrangement. The order or tariff of rates made and fixed by the commission being *prima facie* evidence that such rates are equal and reasonable, there is nothing in the claim made by counsel that it was the duty of the court below to make a specific finding as to the cost of transacting the business involved in this litigation, and if it had been the proper practice, where findings are not sufficiently specific, is to request that they be made so. Cummings *v.* Rogers, 36 Minn., 317.

That the commission had made the order complained of stood admitted in the defendant's answer herein, and it therefore became necessary for defendant to introduce competent and sufficient evidence at the trial to meet and overcome the *prima facie* case made by the relator. This counsel attempted to do by calling as witnesses several persons engaged in railroading, among them Mr. Nay, who was defendant's auditor. We shall not encumber this opinion with tables of figures as presented by this witness, but will simply say that appellant's capital stock outstanding June 30, 1899, the end of its fiscal year, was $10,000,000, while its bonded indebtedness was $17,800,000, the bonds bearing interest ranging from 4 to 7 per cent. per annum, the total interest per year aggregating $659,540. The total cost of the road
189 up to the date last given was $23,390,560.15, including all equipment. The gross earnings, interest from investments, interest and exchange, from trackage and other rentals for the year—that is, the total receipts—were $2,696,601.31. The total expenditures for the year were $2,237,939.27; the net income being $458,662.04. The witness testified that if the whole of this sum had been devoted to the payment of dividends upon capital stock it would be about 4½ per cent., and he also testified that it would not be practicable, in his opinion, to apply every dollar of the net income to the payment of stock dividends. We presume this to be true, but why it is so and to what use a part of the net income would necessarily be diverted from stock dividends, the witness omitted to state. He was then examined as to the earnings of the various operating divisions on the road, testifying to an actual deficit when compared with operating expenses. He was asked the average cost of operation per ton per mile in the Western division, including all kinds of merchandize, and fixed it at 1.293 cents, a little over one and a quarter cents, while the revenue returned under the rate fixed by the order would be but .779 of a cent, the net loss being a little over one-half cent per ton per mile. He then took up another division, and on this, according to the figures, the loss in hauling coal in carload lots would be about two cents per mile per ton. The cost of operating other divisions per mile was also shown, and on one was but .704 of a cent per ton per mile; and the average cost per ton per mile for carrying freight on the entire system was given by this witness as 1.112 cents for the year ending June 30, 1899. This included all business, through and local, the latter being esti-

mated at one-fourth of all, while the revenue derived for carrying coal at the rate fixed by the commission and to the stations named in the order would be 1.118 cents. This would be but .006 of a cent per ton per mile more than the average
190 cost for all classes of freight on the entire system. Upon the face of these figures and accepting them as correct for the purpose of deciding this case, it would seem that the rates fixed could not be sustained; but when we scrutinize the testimony of this witness and other persons upon which defendant relies we discover that the court below was right when it held that the *prima facie* character of the order had not been overturned by the proofs, for Mr. Nay's estimate as to the expense per mile is clearly wrong. He includes in his estimate of expenses for operation the dividends which were declared upon stock and interest paid upon bonds. He was asked upon cross-examination how he got at the amount of 1.112 cents as the average cost for carrying freight on the entire system and answered: "I arrived at that by taking the total operating expenses—taxes, *interest on bonded debt, dividends on stock*, amounts paid for trackage and other rentals, aggregating $2,532,522.60—and deducted therefrom receipts from interest and exchange, interest on investments, and trackage and other rentals received, amounting to $196,596.95, leaving a total net cost of $2,335,925.65. I found that the freight earnings were 74.41 per cent. of the gross earnings, and I took 74.41 per cent. of the net cost, which made $1,738,162.28 as chargeable to freight, and by dividing that by the total tons one mile gives 1.112 cents."

And when questioned as to his methods when ascertaining the cost per mile of operating each of the divisions before mentioned, and concerning which we have given his figures, his answer was in every instance that he included as *operating expenses* dividends paid upon stock shares and interest paid, with one exception. Referring to one division, the Southwestern, the questions put to Mr. Nay and his answers were as follows:

"Q. So that is the estimate you have made, the South-
191 western division gets a credit of fifty per cent. more than the actual earnings on a mileage prorate?

A. Yes, sir.

Q. And you say you have charged it with no dividend?

A. No, sir.

Q. On the other divisions you have included the dividend?

A. Yes, sir.

Q. Now, on what stock has dividends been paid?

A. On the first preferred and second preferred.

Q. The first preferred stock has been retired, has it not?

A. It was retired June 1st.

Q. And you have not included it in your capitalizations?

A. No, sir.

Q. Your statement that there was $10,000,000 of stock outstanding does not include the first preferred?

A. Does not include the first preferred.

Q. What was the amount of the first preferred?

A. $2,500,000.
Q. What dividends were paid on the second preferred?
A. There has been $180,000 paid on the second preferred.
Q. What percentage?
A. That would be four and one-half per cent.
Q. Four and one-half?
A. Yes, sir; two per cent. the first dividend and two and a half the second."

It seems to us very clear that in estimating the *operating expenses* of a railroad stock dividends cannot be included. They are no part of the cost of *operation*. Nor should they be included under any of the authorities when ascertaining the reasonableness of a rate tariff. This is in no manner denying the defendant's right to earn sufficient to pay its operating expenses, interest upon its *bona fide* bonded indebtedness, and a proper dividend upon its lawfully issued stock shares or value of the investment. We must not be understood by this last remark as intimating that defendant's bonded indebtedness and stock shares as testified to are not *bona fide* and proper
192 in every respect, for that stands admitted by all parties hereto.

We think, taking Mr. Nay's figures only, that it very conclusively appears that if all local freight of every class and description was carried at the rates fixed by the commission for coal in car-load lots the earnings would be ample to meet the operating expenses, interest upon the bonded indebtedness (although upon a part thereof the rate is very high), and a fair rate of interest upon the investment. This is evident from the table prepared by the State expert, Mr. Yapp, from figures submitted by Mr. Nay. We need not specifically allude to these tables, but one shows the total number of tons of hard coal received from Duluth for year ending June 30th, 1899, M. & St. L. R. R. proportion of revenue an average rate per ton per mile; also loss of revenue had commissioners' rates been in effect. Had the new rates been in effect that year the loss of revenue to defendant, according to this table, in evidence and not disputed, would have amounted to less than $1,500. This is a very slight depreciation of revenue, when we discover that the total earnings on freight on the divisions affected by the order amounted to over $700,000 for that fiscal year. There is another suggestive thing appearing in one of these tables, also undisputed. The estimated cost per ton per mile for carrying freight on that part of defendant's road lying in this State and also for the whole line—figures furnished by defendant—appears for the years 1890 to 1893, inclusive. The most expensive year of the four (for Minnesota) was 1892. Cost per mile per ton, .695 of a cent—that is, less than $\frac{7}{10}$ of a cent. For the entire system the expensive year was 1891. Cost per mile per ton, .743 of a cent, less than $\frac{8}{10}$ of one cent. A suggestion that the rapid increase in cost of operation from 1893 to 1898 needed explanation is hardly necessary, but a part of the explanation was furnished when it appeared that these stock dividends were included in the item of operating expenses.

193 It appeared from these tables, prepared from figures furnished by defendant corporation and not contradicted by its

witnesses, that on one division the average cost per ton per mile was .907 of a cent, while on the entire system or line it was but .709 of a cent., a trifle more than $\frac{7}{10}$ of a cent—in other words, about four-tenths of a cent less than the commissioners' rate. It should be said, however, at this point, that Mr. Yapp in making these computations confined operating expenses to actual expenses, including money paid out for taxes and for rentals. He did not include interest on bonds or dividends on stock. Counsel for defendant claims something for testimony as to rates received by other roads for this class of service, and by comparison asserts that the tariff complained of is too low. This method of ascertaining the reasonableness of the tariff is valueless, because it may be that the other roads are exorbitant in their charges. That another road is receiving, say, $1.00 per ton for carrying coal one hundred miles, while defendant receives but seventy-five cents for the same distance, may prove that the other road charges too much and should be looked after by the commission, but this kind of evidence does not demonstrate that defendant is receiving too little, and that the commission has fixed an unfair and unreasonable tariff of rates on its line. Another matter may well be referred to, and that is the so-called "commercial necessity," before referred to, namely, the application of principles in fixing rates which are forced upon carriers by various conditions and situations, and, as said in the Steenerson case, appear at first glance to amount to discrimination between towns and commodities. As was there stated, this rule is an every-day practice with carriers, and that it is well known and justified in business circles and is tolerated and approved because of the necessity cannot be overlooked by the courts any more than it is by legislatures or by commissioners or by the carriers themselves when making schedules of rates for the
194 transportation of either passengers or merchandize, and if this business policy actuates and influences the carriers themselves to disregard a rule of strict comparison and strict equality as between bulk or weight or value of the various commodities, and to carry one article many more miles for the same money that they do another, although there may be no substantial difference in bulk or weight or otherwise between these two articles, and this is approved by the public as good business policy under the circumstances, there is no reason why the legislature or the commission should not be actuated, influenced, and governed by the same rule, and there is no reason why the courts should not heed and act upon it when called upon to consider and review an order of the character of the one at bar.

This rule has constantly been recognized and acted upon by railroads and has often been referred to and countenanced by the Interstate Commerce Commission when considering the question of long and short hauls. It is this rule which governs when considering the long haul as against the short and permits the higher rate per mile for the latter, and it also allows a greater rate to be charged upon certain classes of freight than upon other classes where there is no material difference in weight, bulk, value, or cost of transportation, and is justified by the same argument.

At this trial it appeared from the evidence, and it is a matter of common knowledge, that articles for carriage as freight are classified somewhat arbitrarily by railroad companies and a different rate fixed for the transportation of each class, coal being in a very low rate class. Some articles—wood, for instance—were voluntarily carried in car-load lots for less than coal would be, if the order was complied with, and, if Nay was right in his figures, at less than cost. It also appeared that defendant under the old tariff of rates discriminated between stations on its
195 lines—that is, its freight mileage was not an uniform rate per mile, the result being that for some stations a lower rate prevailed than for others, the haul being the same as to distance. In view of the fact that freight is classified, that different tariff rates are fixed for each class, and that coal is placed by carriers themselves in the lowest class—that is, in the class which is usually transported at the lowest rate—it was, in our opinion, insufficient for defendant to rest its legal duty to overcome the *prima facie* character of the order by simply attempting to show that if all classes of freight *was* carried at the rates fixed by the order the revenue of the defendant road would be insufficient to meet its obligations, and therefore that the rate was unreasonable and confiscatory. The fact is that all classes of freight are not to be carried at this rate unless defendant chooses to do so. It would seem to follow that defendant did not go far enough in its evidence on this point. Again, recognizing fully the commercial necessity before mentioned, evidence should have been introduced on which a finding could have been based to the effect that there was no class of traffic on defendant's road upon which rates could be made or actually had been made and were being collected which would or had made good the loss of revenue resulting from the order. Nothing of this sort was attempted. One other suggestion in respect to defendant's failure of proof in rebuttal of the order: The rule laid down in the Steenerson case for ascertaining and determining whether the rates fixed are reasonable and not confiscatory was wholly ignored.

Defendant's counsel did show what the road had cost up to June 1, 1899. This included every item of expenditure from the start. Cost of construction, repairs, equipment, additions, and all other items were included; but not a particle of proof was presented as to present value or cost of reproduction. Nor did counsel pay any attention to what has been said by the court of last resort on this particular
196 subject. We quote: "But the rights of the public would be ignored if rates for the transportation of persons or property on a railroad are exacted without reference to the fair value of the property used for the public or the fair value of the services rendered, but in order simply that the corporation may meet operating expenses, pay the interest on its obligations, and declare a dividend to stockholders." Smyth *v.* Ames, 169 U. S., 466.

This is but a reiteration of what had theretofore been said in Dowe *v.* Beidelman, 125 U. S., 680. Nor do we understand that in the very recent opinion of the same learned court as announced in January last—Chi. R'y Co. *v.* Board, 20 Sup. Court Rep., 336—there has been

any departure or intimation thereof from what had been said in the earlier cases. It was there remarked that the State "court proceeded upon the theory that a comparison of the actual gross receipts of the company from its South Dakota local business with those which it would have received if the rates prescribed by the defendants had been in force was sufficient to determine the questions of the reasonableness of these latter rates, and instituted such comparison with respect to the four years preceding the commencement of this suit. Now, it is obvious that the amount of gross receipts from any business does not of itself determine whether such business is profitable or not. The question of expenses incurred in producing those receipts must be always taken into account, and only by striking the balance between the two can it be determined that the business is profitable. The gross receipts may be large, but if the expenses are larger surely the business is not profitable. It cannot be said that the rates which a legislature prescribes are reasonable if the railroad company charging only those rates finds the necessary expenses of carrying on its business greater than its receipts." It would seem self-evident that if the gross receipts of a business are less than
197 are the expenses of conducting that business there is a loss to the party carrying it on, and so the decision was clearly right, but in no manner does it affect the case before us.

Referring again to the rule laid down in the Steenerson case and that established in the Smith case, it is to be observed that the latter is more liberal, and if adopted by us for the purposes of this case defendant should not complain. It is evident that there was a lack of proof as to the present as compared with the original cost of construction unless, as urged by counsel, we assume that either the amount of stock and bonds outstanding or the construction account represent it. We decline to act on this assumption, and we do not regard the authority cited—Ames *v.* R'y Co., 64 Fed. Rep., 177—as so holding.

Judgment affirmed.

COLLINS, *J.*

198 STATE OF MINNESOTA, } *Supreme Court,* } *ss.*:

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the opinion and syllabus in the cause therein entitled, as appears from the original, remaining on file in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom and of the whole thereof.

Witness my hand and seal of said supreme court, at the capitol, in the city of St. Paul, this 14th day of June, A. D. 1900.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE, *Clerk.*

199 [Endorsed:] No. 12111. State of Minnesota, supreme court. State *ex rel.* R. R. and Warehouse Com., resp't, *vs.* M'p'l's and

St. Louis R. R. Co., appellant. Copy opinion and syllabus. Original filed June 13, 1900. D. F. Reese, clerk. April term, A. D. 1900. Collins, J.

200 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

STATE OF MINNESOTA *ex Rel.* RAILROAD AND WAREHOUSE COMMISSION, Respondent,
vs.
THE MINNEAPOLIS AND ST. LOUIS R. R. CO. ET AL., Defts; Minneapolis and St. Louis R. R. Co., Appellant. } No. 207.

Pursuant to an order of court duly made and entered in this cause on the 29th day of June, A. D. 1900—

It is here and hereby determined and adjudged that the judgment of the court below herein appealed from, to wit, of the district court of the second judicial district, sitting within and for the county of Ramsey, be, and the same hereby is, in all things affirmed.

And it is further determined and adjudged that the respondent above named do have and recover of said Minneapolis and St. Louis Railroad Company, appellant herein, the sum and amount of seventy-four and $\frac{65}{100}$ dollars ($74.65), costs and disbursements in this cause in this court, and that said respondent have execution for the enforcement thereof.

Dated and signed this 29th day of June, A. D. 1900.

By the court:

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$25.00
Clerk's fees for making return	
Printer's fees	39.65
Clerk's fees, supreme court	10.00
Filing mandate	
Affidavits and acknowledgments	
Postage	
	$74.65

201 STATE OF MINNESOTA, } ss:
Supreme Court, }

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this twenty-ninth day of June, A. D. 1900.

D. F. REESE, *Clerk.*

[Endorsed:] 12111. State of Minnesota, supreme court. Transcript of judgment. Filed June 29, A. D. 1900. D. F. Reese, clerk.

202 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

STATE OF MINNESOTA *ex Rel.* R. R. AND Warehouse Commission, Respondent, *vs.* THE MINNEAPOLIS AND ST. LOUIS R. R. Co. *et al.*, Def'ts; Minneapolis and St. Louis R. R. Co., Appellant.	No. 207. Appeal from District Court, Second Judicial District, County of Ramsey.

This cause having been duly argued and submitted at the general April term of this court, A. D. 1900, upon the return to the appeal herein:

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below, herein appealed from, be, and the same hereby is, in all things affirmed, and that the respondent above named have judgment accordingly.

Entered June 29, A. D. 1900.

By the court:

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.

Attest: D. F. REESE, *Clerk,*
By J. L. HELM, *Deputy.*

203 [Endorsed:] No. 12111. State of Minnesota, supreme court. Copy of order for judgment. Filed June 29, A. D. 1900. D. F. Reese, clerk.

204 STATE OF MINNESOTA:

Supreme Court, General April Term, A. D. 1900.

TUESDAY MORNING, 9.30 O'CLOCK, *June* 13, 1900, *A. D.*

Court convened pursuant to adjournment, all the justices being present.

STATE *ex Rel.* RAILROAD AND WAREHOUSE Commission, Respondent,
vs.
THE MINNEAPOLIS AND ST. LOUIS Railroad Company *et al.*, Def'ts; Minneapolis & St. Louis R. R. Company, Appellant.
} Cal. No., 207; Reg. No., 12111.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was argued by counsel, submitted to the court for decision, and taken under advisement.

A true record.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*

205 [Endorsed:] 12111. State of Minnesota, supreme court. Copy of minutes of argument. Filed June 29, A. D. 1900. D. F. Reese, clerk.

206 [Endorsed:] No. 12111. State of Minnesota, supreme court. State of Minnesota *ex rel.* Railroad and Warehouse Commission, respondent, against Minneapolis and St. Louis R. R. Co., appellant. Judgment-roll. Filed June 29, 1900. D. F. Reese, clerk.

207 STATE OF MINNESOTA, } *ss.*:
Supreme Court, }

I, D. F. Reese, clerk of the supreme court of Minnesota, do hereby certify and return to the Supreme Court of the United States that the foregoing and annexed transcript of record is a full and complete transcript of the record in said court in the case of State of Minnesota *ex rel.* Railroad and Warehouse Commission, plaintiff and respondent, and The Minneapolis and St. Louis Railroad Company, appellant, and The St. Paul and Duluth Railroad Company, defendant, in said supreme court, including the pleadings, exhibits, stipulations of fact, findings of fact and conclusions of law, judgment, judgment-roll, opinion of said supreme court in said cause, assignment of errors made and filed in said cause by the defendants and appellant, and all papers filed and proceedings had in said cause in said court.

I do further certify and return that I have annexed to said transcript and included therewith the original writ of error from the Supreme Court of the United States; the original citation issued therein, with proof of service thereon; also the original petition for the allowance of said writ of error, together with the assignment of errors and a copy of the bond on said writ of error, and that the foregoing constitutes a full, true, and complete return to said writ of error.

I do further certify that section 3 of rule 9 of the supreme court of Minnesota is and has been at all time- while said case was in said court as follows:

"Prefixed to the brief of the appellant, but stated separately, shall be the assignment of errors intended to be urged. Each specification of error shall be separately, distinctly, and concisely stated, without repetition, and they shall be numbered consecutively. When the error specified is that the finding of the court below or referee is not sustained by the evidence, it shall specify particularly the finding complained of. No error not affecting the jurisdiction over the subject-matter shall be considered unless stated in the assignment of errors."

The assignment of errors incorporated in the foregoing record entitled "Assignment of errors made and filed by defendant
208 and appellant in State supreme court" was duly made and filed in said State supreme court on the 3d day of April, 1900, prefixed to the brief of appellant, and stated separately in accordance with the rules of practice of said court in all things, and *were* a part of the record in said court upon which said cause was heard and determined.

In witness whereof I have hereunto set my hand and the seal of said supreme court of the State of Minnesota, at the capital, St. Paul, Minnesota, this 19th day of July, A. D. 1900.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE,
Clerk Supreme Court of Minnesota,
By J. L. HELM, *Deputy.*

[Endorsed:] State of Minnesota, supreme court. Return to U. S. Supreme Court. The M'p'l's & St. Louis R. R. Co., plaintiff in error, *vs.* State of Minnesota *ex rel.* R. R. and Warehouse Commission, defendant in error.

Endorsed on cover: File No., 17,866. Minnesota supreme court. Term No., 381. The Minneapolis & St. Louis Railroad Company, plaintiff in error, *vs.* The State of Minnesota *ex rel.* The Railroad and Warehouse Commission. Filed August 9, 1900.